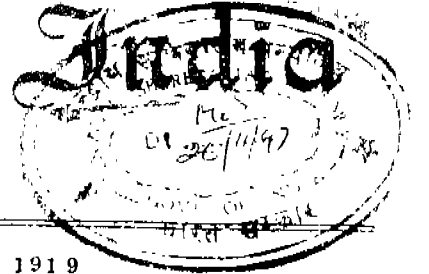




# भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित  
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सं. 36]  
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NEW DELHI, SATURDAY, SEPTEMBER 6, 1997/BHADRA 15, 1919

इस भाग में निम्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

## भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए विविध आदेश और अधिवृत्तान्त  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

कार्यक्रम, लोक-शिकायत तथा पेंशन मंत्रालय  
(कार्यक्रम और प्रशिक्षण विभाग)  
नई दिल्ली, 7 अगस्त, 1997

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS  
(Department of Personnel & Training)

New Delhi, the 7th August, 1997

का. आ. 2149—केन्द्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा श्री एस. के. सक्सेना, अधिवक्ता, निवासी मकान सं. एफ-263 (द्वितीय तल) विकासपुरी, नई दिल्ली, को सुशील कुमार की हत्या से संबंधित मामला आर. सी. 7 (एस.)/96-एस.आई.सी.-11 नई दिल्ली (मामला, प्रथम सूचना रिपोर्ट सं.-111 दिनांक 22-4-96, शाना समालोचना, जिन्दा पत्नीपत) तथा इस विषय में जुड़े कोई अन्य मामले अथवा किसी अन्य मामले में चल रहे प्राथमिक मामलों के संचालन के लिए सब न्यायालय में विशेष लोक अभियोजक नियुक्त करती है।

S.O. 2149.—In exercise of the powers conferred under sub-section (8) of section 24 of the Code of Criminal Procedure 1973 (Act No. 2 of 1974, the Central Government hereby appoints Shri S. K. Saxena, Advocate r/o House No. F-263 (II Floor), Vikaspuri, New Delhi as Special Public Prosecutor for conducting RC 7(S)/96-SIU.V/SIC.II New Delhi (case FIR No. 111 dt. 22-4-96 PS Smalkha, Distt. Panipat) relating to the murder of Sushil Kumar in the Session's Court and any other matter connected therewith or incidental thereto in any other courts

[संख्या 225 28/97-ए.वी.डी.-II]  
हरि सिंह, अधर सचिव

[No. 225/28/97/AVD.II]  
HARI SINGH, Under Secy.

वित्त मंत्रालय  
(राजस्व विभाग)

आदेश

नई दिल्ली, 13 अगस्त, 1997

स्टाम्प

का. आ. 2150.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती है जो न्यूक्लीयर पावर कारपोरेशन, नई दिल्ली द्वारा 30 जून, 1995 को आवंटित मात्र तीन सौ इक्कीस करोड़ छब्बीस लाख रु. के सम-मूल्य के

(i) एच-1000001 से एच-1021573 तक की विशिष्ट संख्या वाले सुरक्षित विमोच्य गैर-संचयी कराधेय बंधपत्रों (VIII श्रृंखला-ट्रेंच "ए"), और

(ii) एच-2021574 से एच-2032126 तक की विशिष्ट संख्या वाले सुरक्षित विमोच्य गैरसंचयी कराधेय बंधपत्रों, (VIII श्रृंखला-ट्रेंच "बी") के रूप में वर्णित एक-एक लाख रु. के प्रोमिसरी नोटों के स्वरूप के बंधपत्रों पर उक्त अधिनियम के तहत प्रभार्य है।

[सं. 17/97-स्टा.-फा. सं. 14/28/96-बि.क.]

एस. कुमार, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 13th August, 1997

STAMPS

S.O. 2150.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes of rupees one lakh each described as :—

(a) Secured redeemable non-cumulative taxable bonds (VIII Series Trench 'A') bearing distinctive numbers from H-1000001 to H-1021573; and

(b) Secured redeemable non-cumulative taxable bonds (VIII Series Trench 'B') bearing distinctive numbers from H-2021574 to H-2032126.

of the aggregate value of rupees three hundred twenty one crore twenty six lakh only allotted on 30th June, 1995 by Nuclear Power Corporation, New Delhi are chargeable under the said Act.

[No. 17/97-Stamps-F. No. 14/28/96-ST]

S. KUMAR, Under Secy.

आदेश

नई दिल्ली, 13 अगस्त, 1997

स्टाम्प

का. आ. 2151.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा महाराष्ट्र राज्य वित्तीय निगम, मुम्बई को मात्र अठारह लाख रूपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति देती है जो कि उक्त कम्पनी द्वारा जारी किए गए मात्र चौबीस करोड़ रूपए के कुल मूल्य के 1 से 331 तक की विशिष्ट संख्या वाले प्रोमिसरी नोट के रूप में 13.75% एम एस एफ सी बांड-2007 (72 वीं श्रृंखला) पर स्टाम्प शुल्क के कारण प्रभार्य है।

[सं. 33/97-स्टाम्प-एफ. सं. 15/8/97-एस.टी.]

एस. कुमार, अवर सचिव

ORDER

New Delhi, the 13th August, 1997

STAMPS

S.O. 2151.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Maharashtra State Financial Corporation, Mumbai to pay consolidated stamp duty of rupees eighteen lakhs only chargeable on account of the stamp duty on 13.75% MSFC Bonds-2007 (72nd Series) in the form of promissory notes bearing distinctive numbers from 1 to 331 aggregating to rupees twenty four crores only issued by the said Corporation.

[No. 33/97-Stamps-F. No. 15/8/97-ST]

S. KUMAR, Under Secy.

आदेश

नई दिल्ली, 13 अगस्त, 1997

स्टाम्प

का. आ. 2152.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती है जो राष्ट्रीय आवास बैंक नई दिल्ली द्वारा दिनांक 9 जनवरी, 1996 को प्रोमिसरी नोटों के रूप में आवंटित किए गए 22 करोड़ 50 लाख रु. के कुल मूल्य के 14% एन एच बी बांड-2006 (8 वीं श्रृंखला) के रूप में वर्णित बांडों पर उक्त अधिनियम के अंतर्गत प्रभार्य है।

[सं. 34/97-स्टाम्प-फा. सं. 14/21/96-बि.क.]

एस. कुमार, अवर सचिव

## ORDER

New Delhi, the 13th August, 1997

## AMPS

S.O. 2152.— of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of Promissory Notes described as 14%, NHB Bonds-2006 (8th Series) aggregating to rupees twenty two crore fifty lakh only allotted on 9th January, 1996 by National Housing Bank, New Delhi are chargeable under the said Act.

[No. 34/97-Stamp—F. No. 14/21/96-ST]

S. KUMAR, Under Secy.

## आदेश

नई दिल्ली, 13 अगस्त, 1997

## स्टाम्प

का. आ. 2153.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा उस शुल्क को माफ करती है जो राष्ट्रीय आवास बैंक, नई दिल्ली द्वारा दिनांक 28 जनवरी, 1997 को प्रोमिसरी नोटों के रूप में आबंटित किए गए 25 करोड़ रु. के कुल मूल्य के 13.75 — एन एच बी बांड 2007 (9 वीं श्रृंखला) के रूप में वर्णित बांडों पर उक्त अधिनियम के अंतर्गत प्रभार्य है।

[सं. 35/97—स्टाम्प्स—फा. सं. 14/21/96-बि.क.]

एस. कुमार, अवर सचिव

## ORDER

New Delhi, the 13th August, 1997

## STAMPS

S.O. 2153.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes described as 13.75% NHB Bonds-2007 (9th Series) aggregating to rupees twenty five crores only allotted on 28th January, 1977 by National Housing Bank, New Delhi are chargeable under the said Act.

[No. 35/97-Stamp—F. No. 14/21/96-ST]

S. KUMAR, Under Secy.

## आदेश

नई दिल्ली, 13 अगस्त, 1997

## स्टाम्प

का. आ. 2154.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा उस शुल्क को माफ करती है जो राष्ट्रीय आवास बैंक, नई दिल्ली द्वारा दिनांक 26 मार्च, 1997 को प्रोमिसरी नोटों के रूप में आबंटित किए गए 500

करोड़ रु. के कुल मूल्य के एन एच बी—प्राथमिकता सेक्टर बांड 1996-97 (प्रथम श्रृंखला) के रूप में वर्णित बांडों पर उक्त अधिनियम के अंतर्गत प्रभार्य है।

[सं. 36/97-स्टाम्प्स—फा. सं. 14/21/96-बि.क.]

एस. कुमार, अवर सचिव

## ORDER

New Delhi, the 13th August, 1997

## STAMPS

S.O. 2154.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes described as NHB-Priority Sector Bond-1996-97 (1st Series) aggregating to rupees five hundred crores only allotted on 26th March, 1997 by National Housing Bank, New Delhi are chargeable under the said Act.

[No. 36/97-Stamp—F. No. 14/21/96-ST]

S. KUMAR, Under Secy.

## आदेश

नई दिल्ली, 13 अगस्त, 1997

## स्टाम्प

का. आ. 2155.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा उस शुल्क को माफ करती है जो स्टेट बैंक आफ मैसूर द्वारा दिनांक 15 जनवरी, 1997 को प्रोमिसरी नोटों के रूप में आबंटित किए गए 75 करोड़ रु. के कुल मूल्य के प्रत्येक 50-50 हजार रु. के 00001 से 15000 तक की विशिष्ट संख्या वाले असुरक्षित अपरिवर्तनीय विमोच्य बांड के रूप में वर्णित बांडों पर उक्त अधिनियम के अंतर्गत प्रभार्य है।

[सं. 37/97-स्टाम्प्स—फा. सं. 14/4/97-बि.क.]

एस. कुमार, अवर सचिव

## ORDER

New Delhi, the 13th August, 1997

## STAMPS

S.O. 2155.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes described as Unsecured, Non-Convertible redeemable Bonds bearing distinctive numbers from 00001 to 15000 of rupees fifty thousand each aggregating to rupees seventy five crores only allotted on 15th January, 1997 by the State Bank of Mysore, are chargeable under the said Act.

[No. 37/97-Stamp—F. No. 14/4/97-ST]

S. KUMAR, Under Secy.

(ग्राहिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 22 अगस्त, 1997

का. आ. 2156 भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 की 28) की धारा 5 की उपधारा (2) के खण्ड (ख) के साथ पठित धारा 6 के उपधारा (1) और उपधारा (2) के खण्ड (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा वर्तमान में भारतीय निर्यात-आयात बैंक के कार्यपालक निदेशक श्री वाई. सी. देसाई को उनके कार्यधार सम्भारण की तारीख से 30, अप्रैल 2001 तक की अवधि के लिए भारतीय निर्यात-आयात बैंक का प्रबन्ध निदेशक (पूर्ण कालिक निदेशक) नियुक्त करती है।

[संख्या एक. 7/2/97-बी. आ. -1]

एम. दामोदरन, संयुक्त सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 22nd August, 1997

S.O. 2156.—In exercise of the powers conferred by clause (a) of sub-section (1) and Sub-Section (2) of section 6 read with clause (b) of sub-section (2) of Section 5 of the Export-Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby appoints Shri Y. B. Desai, presently Executive Director, Export-Import Bank of India, as the Managing Director (wholetime director), Export-Import Bank of India, for the period from the date of his taking charge and upto 30th April, 2001.

[F. No. 7/2/97-B.O.I]

M. DAMODARAN, Jt. Secy.

विदेश मंत्रालय

नई दिल्ली, 12 अगस्त, 1997

का. आ. 2157 राजनयिक कौंसलो अधिकारी (अथवा एवम् भुक्त) अधिनियम 1948 (1948 का 41 वां) की धारा 2 के अंक के अनुसरण में केन्द्रीय सरकार एतद् द्वारा भारत का राजदूतावास पेरिस में सहायक श्री यो० कृष्णामूर्ति को 23 जुलाई, 97 से सहायक कौंसलो अधिकारी का कार्य करने के लिए प्राधिकृत करती है।

[सं. टी. 4330/2/96]

वी० महालिंगम, अवसर सचिव (पी.बी.एस.)

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 12th August, 1997

S.O. 2157.—In pursuance of the Clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri V. Krishnamoorthy, Assistant in the Embassy of India PARIS to perform the duties of Asst. Consular Officer with effect from 23rd July, 1997.

[No. T-4330/2/96]

V. MAHALINGAM, Under Secy. (Consular)

शहरी कार्य और रोजगार मंत्रालय

(शहरी विकास विभाग)

(दिल्ली प्रभाग)

नई दिल्ली, 8 अगस्त, 1997

का. आ. 2158 यतः निम्नलिखित धारा के बारे में कुछ संशोधन, जिनमें केन्द्रीय सरकार अधोवर्षित क्षेत्रों के बारे में दिल्ली वृहद योजना/क्षेत्रीय विकास योजना में प्रस्तावित कमी है तथा जो दिल्ली विकास अधिनियम, 1956 (1957 का 61) की धारा 44 के प्रावधानों के अनुसार दिनांक 22-7-96 के नोटिस संख्या एफ. 20-5-95-एम पी द्वारा प्रकाशित किए गए थे जिसमें उप अधिनियम की धारा 11-ए की उपधारा (3) में अपेक्षित आधिनियमों/सुझाव उत्तर नोटिस की तारीख के 30 दिन की अवधि में आमंत्रित किए गये थे।

और यतः प्रस्तावित संशोधनों के बारे में प्रस्तावित प्रस्तावित संशोधनों पाका जो धारणाओं/सुझाव प्राप्त नहीं हुए थे और मामले के सभी पहलुओं पर सावधानीपूर्वक विचार करने के पश्चात् केन्द्र सरकार ने दिल्ली वृहद योजना में संशोधन करने का निर्णय लिया है।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 11-ए की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत के राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से दिल्ली की उक्त वृहद योजना में एतद्वारा निम्नलिखित संशोधन करती है :

संशोधन: शहरी विस्तार में घटने वाले 101 हेक्टर (250 एकड़) क्षेत्र, जो उत्तर, पूर्व और दक्षिण में कृषि भूमि से और पश्चिम में विद्यमान टीकरी कला-झाँदा कला रोड से घिरा है, का प्र. उपयोग "कृषि हरित / ग्रामीण उपयोग क्षेत्र" से "प्रकाश और सेवा उद्योग" (पी. बी. सी. बाजार) के रूप में परिवर्तित किया जाता है।

[गं० के-13011/34/95-उ.आ. पी.]

के०के० गुप्ता अवसर सचिव,

MINISTRY OF URBAN AFFAIRS &amp; EMPLOYMENT

(Department of Urban Development)

(Delhi Division)

New Delhi, the 8th August, 1997

S.O. 2158.—Whereas certain modification which the Central Government proposed to make in the Master Plan for Delhi/Zonal Development Plan regarding the area mentioned hereunder were published with Notice No. F. 20(5) 94-MP dated 22-7-96 in accordance with the provisions of Section 44 of the Delhi Development Act, 1956 (61 of 1957) inviting objections/suggestions as required by Sub-section (3) of Section 11-A of the said Act, within thirty days from the date of the said notice.

Whereas two objections/suggestions were received with regard to the proposed modification and whereas the Central Government after carefully considering all aspects of the Matter, decided to modify the Master Plan.



Now, therefore, in exercise of the powers conferred by Sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modification in the said Master Plan for Delhi with effect from the date of Publication of this Notification in the Gazette of India.

## MODIFICATIONS :—

"The land use of an area measuring 101 ha. (250 acres) falling in Urban Extension, boundary by agricultural land in the North, East and South and the existing Tikri Kalan-Jharoda Kalan Road in the west, is proposed to be changed from 'agricultural green/rural use zone' to 'light and service industry' (PVC Bazar)".

[No. K-13011/34/95-DDIB]  
K. K. GUPTA, Under Secy.

वस्त्र मंत्रालय

नई दिल्ली, 30 जुलाई, 1997

का.सं. 2159.—केन्द्रीय सरकार, राजधानी (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम 4 के अनुसरण में वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालयों की, जिनमें 80 प्रतिशत कर्मचारीवृन्द में हिंदी का साधन ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:-

- (1) कन्नानूर स्पिनिंग एंड वीविंग मिल माहे, तीसरी मंजिल, नन्जप्पा मंशन, 29/2, के.एच. रोड, शांतिनगर, बंगलूर-560027
- (2) मिनेरवा मिल, (ए पी के के एच माहे) लिमिटेड, तीसरी मंजिल, नन्जप्पा मंशन 29/2, के.एच. रोड, शांतिनगर बंगलूर-560027।
- (3) बुनियादी बीज गुणन व प्रशिक्षण केन्द्र, केन्द्रीय तसर अनुसंधान व प्रशिक्षण संस्थान, केन्द्रीय रेशम बोर्ड, बोइरदादर जिला रायगढ़-496004 (म.प्र.)

[सं. ई-11015(2)/95-हिन्दी]

चन्द्र भान, उप सचिव

## MINISTRY OF TEXTILES

New Delhi, the 30th July, 1997

S.O. 2159.—In pursuance of Sub-Rule 4 of Rule 10 of the official Language (Use for official purposes of the Union), Rule, 1976 the Central Government hereby notifies the following offices under the Ministry of Textiles, whereof more than 80% staff have acquired working knowledge of Hindi :—

1. Cannanore Spinning and Weaving Mills, Mahe, 3rd floor, Nanjappa Mansion, 29/2, K. H. Road, Shantinagar, Bangalore-560027.
2. Minerva Mill, (APKK&M) Ltd., 3rd floor, Nanjappa Mansion, 29/2, K. H. Road, Shantinagar, Bangalore-560027.
3. Buniyadi Beej Gunan & Training Centre, Kendriya Tasar Anusandhan & Training Sansthan, Central Silk Board, Boirdadar, Distt. Roygarh-496004 (M.P.).

[No. E-11015/2/95-Hindi]  
CHANDER BHAN, Dy. Secy.

## जल-भूतल परिवहन मंत्रालय

नई दिल्ली, 14 अगस्त, 1997

का.सं. 2160.—भारत सरकार, निम्नलिखित कार्यालयों का, जहाँ 80% से अधिक कर्मचारियों में हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, और जो इस मंत्रालय के प्रशासनिक नियंत्रण में हैं, राजभाषा (संघ के सरकारी उद्देश्य के लिए प्रयोग) नियमावली, 1976 के नियम 10 के उप नियम (4) के तहत अधिसूचित करती है।

भारतीय नौवहन निगम लिमिटेड;

"शिपिंग हाउस" कलकत्ता-700001।

[का. सं. ई-11011/7/96-हिन्दी]

के. आर. भारती, संयुक्त सचिव

## MINISTRY OF SURFACE TRANSPORT

New Delhi, the 14th August, 1997

S.O. 2160.—In pursuance of sub-rule (4) of rule 10 of the Official Language (use for the Official purposes of the Union) Rules, 1976, the Govt. of India hereby notifies the following Office under the administrative control of the Ministry of Surface Transport where more than 80% of staff have acquired working knowledge in Hindi :—

The Shipping Corporation of India Ltd.,  
Shipping House, Calcutta-700 001.

[F. No. E-11011/7/96-Hindi]  
K. R. BHATI, Jr. Secy.

## (नौवहन पत्र)

नई दिल्ली, 19 अगस्त, 1997

का.सं. 2161.—राष्ट्रीय नौवहन बोर्ड नियमावली, 1960 के नियम 3 के साथ पठित वाणिज्यिक पोत परिवहन अधिनियम 1958 (1958 का 44) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा भारत सरकार, जल भूतल परिवहन मंत्रालय (नौवहन पत्र) की दिनांक 11 अप्रैल, 1997 की अधिसूचना सं. एस. एस. -18011/2/96-एस.एस. में निम्नलिखित संशोधन करती है :—

1. उक्त अधिसूचना में विद्यमान प्रविष्टि "2 से 5 तक लोक सभा द्वारा चुने जाने वाले चार संसद सदस्य" के स्थान पर निम्नलिखित प्रविष्टियाँ प्रतिस्थापित की जाएंगी, अर्थात् :-

- "2. श्री आर. ज्ञानगुरुस्वामी  
संसद सदस्य (लोक सभा)
3. श्री गोरधनभाई जाविपा  
संसद सदस्य (लोक सभा)
4. श्री शांतिलाल पुरुषोत्तम दास पटेल  
संसद सदस्य (लोक सभा)
5. श्री पी. सी. धामस  
संसद सदस्य (लोक सभा)"

[का. सं. एस. एस. -18011/2/96-एस. एस.]

आर. के. शर्मा, अवर सचिव

(Shipping Wing)

New Delhi, the 19th August, 1997

S.O. 2161.—In exercise of the powers conferred by Section 4 of the Merchant Shipping Act, 1958 (44 of 1958), read with Rule 3 of the National Shipping Board Rules, 1960, the Government hereby makes the following amendments in the Government of India, Ministry of Surface Transport (Shipping Wing)'s notification No. SS-18011/2/96-SL dated 11th April, 1997 :—

- (i) In the said notification, for the existing entry "2 to 5. Four Members of Parliament—To be elected by Lok Sabha", the following entries shall be substituted, namely :—

- "2. Shri R. Gnanagurusamy,  
M. P. (Lok Sabha).
3. Shri Gordhanbhai Javia,  
M. P. (Lok Sabha).
4. Shri Shantilal Parsotamdas Patel,  
M. P. (Lok Sabha).
5. Shri P. C. Thomas,  
M. P. (Lok Sabha)".

[F. No. SS-18011/2/96-SL]  
R. K. SHARMA, Under Secy.

### दिल्ली विकास प्राधिकरण (मुख्य योजना अनुभाग)

#### सार्वजनिक सूचना

नई दिल्ली, 1 सितम्बर, 1997

का.आ. 2162.—केन्द्रीय सरकार का दिल्ली की मुख्य योजना में निम्नलिखित संशोधन करने का प्रस्ताव है, जिसे आम जनता की जानकारी के लिए एतद्वारा प्रकाशित किया जाता है। प्रस्तावित संशोधनों के संबंध में यदि किसी व्यक्ति को कोई आपत्ति/सुझाव देने हों, तो व अपनी आपत्तियों/सुझावों को इस सूचना के जारी होने की तिथि से 30 दिन की अवधि के अन्दर आयुक्त एवं सचिव, दिल्ली विकास प्राधिकरण, विकास सदन, "बो" ब्लॉक, आई.एन.ए., नई दिल्ली को लिखित रूप में भेज दें। आपत्ति/सुझाव देने वाले व्यक्ति को अपना नाम और पता भी देना चाहिए।

#### संशोधन

1. पृष्ठ 138 पर (बाईं तरफ) शीर्षक "आधारिक संरचना-सामाजिक" उपशीर्षक "स्वास्थ्य" के अन्तर्गत, पैरा के बाद निम्नलिखित सम्मिलित किया जाना प्रस्तावित है;

(i) पूर्व प्रस्तावित सामान्य अस्पताल एवं स्वास्थ्य केंद्र के रूप में द्विस्तरीय प्रणाली ने स्वास्थ्य संबंधी आवश्यकताओं की सभी जरूरतों को पूरा नहीं किया। अब निम्नलिखित प्रणाली की निम्नानुसार सिफारिश की गई है :—

(ii) मद (ग) मध्यवर्ती अस्पताल (धेनी-बी) : (ब) पालतू पशुओं एवं पक्षियों के लिये अस्पताल के बाद निम्नलिखित सम्मिलित किया जाना प्रस्तावित है: लगभग 5 लाख जनसंख्या की आवश्यकताओं को पूरा करने के लिये जिला स्तर पर 2 अस्पताल जिनमें निम्नलिखित सुविधाएं होंगी: सर्जन-लव, कार्यालय, आपरेशन थियेटर, जांच कक्ष, एक्स-रे रूम, वार्ड, स्वागत-कक्ष, किचन, स्टोर आदि।

क्षेत्रफल 0.20 हेक्टेयर

(3) मद सं. (घ), (ङ) एवं (च) को (इ.). (च) एवं (घ) से बदला जाना प्रस्तावित है।

(4) मद सं. (झ) "डिस्पेंसरी" के बाद निम्नलिखित सम्मिलित किया जाना प्रस्तावित है:

"(ज) पालतू पशुओं एवं पक्षियों के लिये डिस्पेंसरी: लगभग 1 लाख जनसंख्या की आवश्यकताओं को पूरा करने के लिये समुदाय स्तर पर 1 डिस्पेंसरी, जिसमें निम्नलिखित सुविधाएं होंगी :—

सर्जन लव, कार्यालय, आपरेशन थियेटर, जांच कक्ष, वार्ड, स्वागत-कक्ष, स्टोर किचन आदि।

क्षेत्रफल 0.05 हेक्टेयर

2. पृष्ठ 145 पर तालिका में मद सं. (4) "समुदाय" के अन्तर्गत उप मद सं. (2) "मध्यवर्ती अस्पताल" "बी" के बाद निम्नलिखित सम्मिलित किया जाना प्रस्तावित है:

(1) पालतू पशुओं एवं पक्षियों के लिये 3 डिस्पेंसरीयाँ 1 500 500 0 0

(2) तालिका में उपमद सं. (3) से (23) को मद सं. (4) से (24) से बदला जाना प्रस्तावित है।

(3) क्षेत्रफल 39.73 हेक्टेयर को "क्षेत्रफल-51.37 हेक्टेयर" से बदला जाना प्रस्तावित है।

(4) मद सं. (5) "जिला" के अन्तर्गत उप मद सं. (1) सामान्य अस्पताल के बाद निम्नलिखित सम्मिलित किया जाना प्रस्तावित है:

पालतू पशुओं एवं पक्षियों 2 2000 4000 0 0 के लिये 2 अस्पताल

(5) तालिका में उप मद सं. (2) से (11) को मद सं. (3) से (12) से बदला जाना प्रस्तावित है।

(6) संख्या के नीचे निम्नलिखित "क्षेत्रफल-68.28 हेक्टेयर" सम्मिलित किया जाना प्रस्तावित है।

3. (1) पृष्ठ 163 पर (बाईं तरफ) शीर्षक "अस्पताल (072)" को अस्पताल (072) (ए) के रूप में बदला जाना है।

(2) "अस्पताल (072) (ए)", अन्य नियंत्रण के बाद निम्नलिखित श्रेणी को सम्मिलित किया जाना प्रस्तावित है।

"अस्पताल (072) (बी)"

पालतू पशुओं एवं पक्षियों के लिये

प्लॉट का अधिकतम आकार 2000 वर्ग मीटर

अधिकतम ग्राउन्ड कवरेज 25%

अधिकतम तल क्षेत्रफल अनुपात 50

तहखाना केवल सेवाओं के लिये।

(3) उप शीर्षक "नर्सिंग होम" के बाद निम्नलिखित श्रेणी को सम्मिलित किया जाना प्रस्तावित है:

डिस्पेंसरी (075) (बी)

पालतू पशुओं एवं पक्षियों के लिये

प्लॉट का अधिकतम आकार 500 वर्ग मीटर

अधिकतम ग्राउन्ड कवरेज 25%

अधिकतम तल क्षेत्रफल अनुपात 50%

तहखाना केवल सेवाओं के लिये।

4. (1) पृष्ठ 172 पर (दाईं तरफ) "072 अस्पताल" को "072 (ए) अस्पताल" के रूप में बदला जाना प्रस्तावित है।

(2) पैरा 072(ए) अस्पताल के बाद निम्नलिखित सम्मिलित किया जाना प्रस्तावित है:

"072 (बी) पालतू पशुओं एवं पक्षियों के लिये अस्पताल"।

सार्वजनिक/निजी या धर्मार्थ संस्था द्वारा संचालित एक ऐसा परिसर, जिसमें अंतरंग और बहिरंग उपचार सुविधाओं सहित सामान्य या विशेष प्रकृति की चिकित्सा सुविधायें उपलब्ध हैं।

(3) शीर्षक "075 डिस्पेंसरी" के बाद निम्नलिखित सम्मिलित किया जाना प्रस्तावित है:

"075 (बी) पालतू पशुओं एवं पक्षियों के लिये डिस्पेंसरी"

सार्वजनिक/निजी या धर्मार्थ संस्था द्वारा संचालित एक ऐसा परिसर, जिसमें चिकित्सा संबंधी सलाह और दवाइयों की व्यवस्था की सुविधायें हैं।

2. दिल्ली मुख्य योजना-2001 की प्रति, जिसमें प्रस्तावित संशोधन समाविष्ट हैं, उक्त निर्दिष्ट अवधि के दौरान निरीक्षण हेतु संयुक्त निदेशक कार्यालय, मुख्य योजना अनुभाग, दि. वि. प्रा., छोटी मंजिल, विकास मीनार,

आई.पी. एस्टेट, नई दिल्ली में सभी कार्य दिवसों को उपलब्ध रहेंगी।

नई दिल्ली

[सं. एफ. 20 (1) 95-एफ.पी.]

दिनांक 6-7-97

बी. एम. बंसल, आयुक्त एवं सचिव

## DELHI DEVELOPMENT AUTHORITY (MASTER PLAN SECTION)

### PUBLIC NOTICE

New Delhi, the 1st September, 1997

S. O. 2162.—The following modifications which the Central Government proposes to make in the Master Plan for Delhi, are hereby published for public information. Any person having any objections/suggestions with respect to the proposed modifications may send the objections/suggestions in writing to the Commissioner-cum-Secretary, Delhi Development Authority, Vikas Sadan, 'B' Block, INA, New Delhi, within a period of 30 days from the date of issue of this notice. The person making the objection/suggestion should also give his/her name and address.

### MODIFICATIONS:

1. On page 138 (left hand side) under the heading 'Infrastructure-Social', Sub-Heading 'Health', after the para, following is proposed to be added:

(i) 'The two tier system in the form the general hospital and health centre proposed earlier did not satisfy the full requirement of health needs. Now the following system has been recommended as given below:

(ii) The following is proposed to be added after item (c) Intermediate Hospital (Category-B); (d) Hospital for pet animals and birds: 2 hospitals at District level to serve about 5 lakh population with following facilities: Surgeon's Labs Office, Operation Theatre, examination room, X-ray room, wards, reception, kitchen, store etc.

(iii) The item nos. (d), (e) and (f) are proposed to be substituted by (e), (f) and (g).

(iv) After item no. (g) 'Dispensary' the following is proposed to be added :

"(h) Dispensary for pet animals and birds : 1 Dispensary at Community level to serve about 1 lakh population with following facilities—Surgeon's lab, Office, Operation Theatre, examination room, wards reception, store, kitchen etc.  
Area 0.05 ha.

2. On page 145 in the table, under item no.

(4) 'Community' the following is proposed to be added after the sub-item no.

(2) 'Intermediate Hospital' 'B'.

(i) 3 Dispensaries for pet 1 500 500 0 0 animals and birds.

(ii) The sub-item nos. (3) to (23) in the table are proposed to be substituted by item nos. (4) to (24).

(iii) Area 39.73 ha. is proposed to be substituted as "Area—51.37 ha."

(iv) Under the item no. (5) 'District' the following is proposed to be added after the sub-item no. (1) General Hospital :

2 Hospitals for pet 2 2000 4000 0 0 animals and birds.

(v) The sub-item nos. (2) to (11) in the table are proposed to be substituted by item nos. (3) to (12).

(vi) Below the figure the following 'Area—68.28 ha.' is proposed to be added :

3. (i) On page 163 (RHS), the heading 'Hospital (072)' is to be substituted as 'Hospital (072)(a)'.

(ii) After the 'Hospital (072)(a), other controls, the following category is proposed to be added.

## "HOSPITALS (072)(b)"

For pet animals and birds  
Maximum plot size 2000 sq. m.  
Maximum ground coverage 25%  
Maximum floor area ratio 50  
Basement only for services.

((iii) After sub-heading 'Nursing Home', the following category is proposed to be added :

DISPENSARY (072)(b) for pet animals and birds.  
Maximum plot size - 500 sq. m.  
Maximum ground coverage 25%  
Maximum floor area ratio 50  
Basement only for services.

4. (i) On page 172 (RHS), '072 Hospital' is proposed to be substituted as '072(a) Hospital'.

(ii) The following is proposed to be added after the para 072(a) Hospital.

'072(b) Hospital for pet animals and birds.'  
A premises providing medical facilities of general or specialised nature with indoor and outdoor treatment facilities, managed by public/private or charitable institution.

(iii) After the heading '075 Dispensary' the following is proposed to be added :  
"075(b) Dispensary for pet animals and birds. A premises having facilities for medical advice and provision of medicines, managed by public/private or charitable institution.

2. A copy of MPD-2001 incorporating the proposed modifications will be available for inspection in the office of the Joint Director, Master Plan Section, DDA, 6th floor, Vikas Minar IP Estate New Delhi on all working days during the period referred above.

New Delhi,

Dated : 6-9-97.

[No. F. 20(15)95-MP]

V. M. BANSAL, Commissioner-cum-Secy.

## पेट्रोलियम और प्राकृतिक गैस मंत्रालय

## अनुसूची

नई दिल्ली, 18 अगस्त, 1997

का. आ. 2163.- - केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइप-लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 763, तारीख 13 मार्च, 1997 द्वारा पेट्रोलियम के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजनार्थ उक्त अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकारों के अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्रित अधिसूचना की प्रतियां जनता को तारीख 22 मार्च, 1997 को उपलब्ध करा दी गई थी;

और उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाना चाहिए;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार अर्जित करने की घोषणा करती है;

यह और कि केन्द्रीय सरकार, उक्त धारा की उप धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार, केन्द्रीय सरकार में निहित होने की बजाए सभी विभागों से मुक्त भारत ओमान रिफाइनरीज लिमिटेड में निहित होगा।

तालुका: धोलका जिला: अहमदाबाद राज्य: गुजरात

गांव का नाम	सर्वेक्षण सं./ खंड सं.	क्षेत्र हेक्टर आरे	सेन्टीआरे	
(1)	(2)	(3)	(4)	(5)
मीठापुर	280	0	17	19
	1398	0	12	45
	79	0	17	70
	88	0	08	72
	83	0	26	07
	87	0	09	85
बगोदरा	694/1	0	00	30
	724	0	00	10
	739	0	00	10
	806	0	00	10
	867	0	00	10
	740	0	44	20
	754	0	21	75
	891/2	0	08	70
	925	0	35	10
मेमर	56	0	24	64
	55/बी	0	06	82
	53	0	41	33
	23	0	02	59
	62	0	23	22
	63	0	25	38
	66	0	40	77
	67	0	41	30
	69/1	0	51	33
	69/2	0	26	60
	70	0	09	75
	75/बी	0	52	88
	75/ए	0	30	85
	76	0	25	02
	77/2	0	43	89
	78	1	04	40
	125/पैकी	0	18	00
	127	0	56	79
	128	0	22	27
	129	0	01	96
	133	0	71	36

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
कोठ	130	0	91	20		500/2	0	11	46
	1098	0	42	91		502	0	23	80
	1096	0	43	18		501	0	28	84
	1095	0	20	07		503/1	0	32	77
	1094	0	34	61		388	0	74	76
	1093	0	33	86		386	0	59	67
	820	0	49	42		384/1	0	34	42
	823	0	30	08		380/1	0	31	63
	822	0	74	34		380/2	0	21	69
	824	0	02	09		365	0	32	17
	891	0	36	77		368	0	15	70
	894	0	47	50		367	0	10	73
	902	0	81	12		366	0	14	59
	915	1	01	24		370	0	20	14
	977/1	0	77	04		361	0	31	28
	977/7	0	00	65		362	0	01	22
	977/8	0	53	85		357/1	0	19	53
	977/9	0	20	23		357/2	0	22	09
	977/10	0	21	30		358	0	69	09
	977/11	0	18	80		346	0	00	56
	972	0	08	20		347	0	11	12
	974	0	22	80		327	0	00	84
	955	0	28	62		348	0	28	31
	956	0	15	71		349	0	15	84
	957	0	10	75		350/1	0	69	09
	950	0	12	71	रूपगढ	33	0	13	78
	958	0	25	72		34	0	21	00
	959	0	17	93		29	0	71	39
	1018	0	20	41		27	0	58	14
	1014	0	14	92		16	0	49	03
	1013/1	0	74	24		15	0	80	10
	1028	0	35	83		7/1	0	69	75
	1006/1	0	03	38		202	0	60	07
	466	0	28	60		207	0	37	77
	467	0	11	88		206	0	04	44
	482/1	0	01	08		208	0	05	58
	483/1	0	26	40		182	0	55	57
	483/2	0	32	73		184	0	48	34
	484	0	30	42		175	0	58	48
	495/1	0	55	71		176	0	93	44
	495/2	0	00	06					
	496	0	13	56					
	497	0	07	81	खरांडी	272	1	23	04

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	271	0	00	96		580	0	36	21
	273	0	36	60	कौका	1239	0	34	45
	270	0	55	23		1240	0	20	80
	269	0	34	30		1234	0	24	56
	268	0	21	52		1241	0	03	06
	274	0	09	53		1233	0	18	28
	267	0	11	62		1232	0	15	43
	263	0	88	86		1227	0	25	72
	275	0	29	78		1228	0	03	65
	262	0	02	77		1226	0	07	13
	276	0	01	40		1225	0	08	10
	298	0	39	67		1224	0	06	00
	299	0	02	68		1223	0	07	96
	300	0	58	53		1222	0	14	55
	301	0	28	04		1220	0	07	70
	303	0	02	44		1219	0	28	32
	302	0	37	99		1211	0	16	58
	312	0	32	04		1202	0	28	34
	320	0	90	11		1203	0	05	47
	319	0	41	71		1201	0	03	06
	19	0	19	42		1200	0	45	01
	20	1	29	28		1199	0	01	53
कालीयापुरा	56	0	41	04		1198	0	12	88
	55	0	51	10		1182	0	46	51
	53	0	30	53		1183	0	01	11
	52	0	55	86		1154	0	39	86
	51	0	13	33		1102	0	38	09
सीमेज	740	0	21	13		1103	0	82	01
	732	0	82	23		1097	0	18	72
	733	0	50	37		1111	0	18	28
	726	0	36	04		1094	0	01	78
	727	0	42	40		1112	0	24	05
	722	0	22	07		1043	0	01	00
	718/ए	0	21	61		1041	0	15	28
	720	0	22	93		1042	0	15	34
	644	0	01	55		1047	0	56	30
	645	0	10	02		1049	0	45	82
646/बी		0	22	00		1052	0	36	70
	660	0	41	62		1051	0	48	86
	661	0	09	49		1017	0	22	79
	659	0	38	20		1014	0	25	93
	604	0	25	76		1015	0	25	40
	601	0	10	48					

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	1013	0	04	55		908	0	38	42
	1016	0	16	56		907	0	50	44
	1002	0	33	78		906	0	54	15
	1003	0	71	05	वीरपुर	45	0	49	91
	981	0	16	45		46/1	0	28	05
	980	0	13	12		46/2	0	13	02
	979	0	06	74		48	0	10	87
	978	0	06	64		49/1	0	00	56
	977	0	03	50	वीरडी	91	0	49	20
	976	0	18	00		90	0	15	61
	975	0	23	23		89	0	30	42
	973	0	17	20		85/1	0	11	81
पालडी	50	0	13	57		86	0	46	79
पीसावाडा	1229	0	64	70		81	0	66	92
	1231	0	32	60		37	0	55	51
	1232	0	15	98		74	0	03	15
	1216	0	21	23		73	0	58	36
	1215	0	39	81		72	0	27	02
	1099	0	24	86		71	0	56	83
	1100	0	36	40		42	0	03	38
	1115	0	22	20		67	0	18	33
	1104	0	10	66		66	0	44	45
	1114	0	48	54		65	0	28	18
	1113	0	14	71	गीरंद	164	0	02	89
	1112	0	14	05		165	0	15	91
	1126-पैकी	0	31	16		166	0	13	39
	1111	0	00	10		167	0	46	76
	1129	0	30	79		169	0	02	20
	1110	0	25	05		168	0	08	06
	1109	0	01	49		212	0	00	03
	1032	0	54	03		211	0	16	60
	1010	0	79	50		210	0	43	87
	953	0	36	76		209	0	15	75
	954	0	46	74		208	0	05	57
	955	0	09	45		209/ए	0	34	41
	971	0	58	81		205	0	23	84
	965	0	14	10		206/ए	0	14	10
	960	0	65	64		304	0	38	00
	961	0	70	05		310	0	22	38
	962	0	44	02		307	0	13	86
	963	0	23	26	[फा. सं. आर-31015/23/96-ओआर.II] के. सी. कटोच, अवर सचिव				
	911	0	24	33					



## Ministry of Petroleum and Natural Gas

## Schedule

New Delhi, the 18th August, 1997

Taluka: Dholka District : Ahmedabad State:Gujarat

S.O. 2163.- Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S. O. 763 dated the 13th March 1997, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the lands specified in the Schedule appended to that notification for the purpose of laying pipeline for the transport of petroleum;

And whereas, the copies of the said gazette notification were made available to the public on the 22nd day of March, 1997;

And whereas, the competent authority in pursuance of sub-section (1) of section 6 of the said Act has made his report to the Central Government;

And whereas, the Central Government after considering the said report is satisfied that the right of user in the lands specified in the Schedule appended to this notification should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification are hereby acquired;

And further in exercise of the powers conferred by sub-section (4) of the said section, the Central Government hereby directs that the right of user in the said lands shall instead of vesting in the Central Government, vest, free from all encumbrances, in the Bharat Oman Refineries Limited.

Name of Village	Survey/Block Number	Area		
		Hectare	Are	Centare
(1)	(2)	(3)	(4)	(5)
Mithapur	280	0	17	19
	1398	0	12	45
	79	0	17	70
	88	0	08	72
	83	0	26	07
	87	0	09	85
	87	0	09	85
Bagodara	694/1	0	00	30
	724	0	00	10
	739	0	00	10
	806	0	00	10
	867	0	00	10
	740	0	44	20
	754	0	21	75
	891/2	0	08	70
	925	0	35	10
	925	0	35	10
Memar	56	0	24	64
	55/B	0	06	82
	53	0	41	33
	23	0	02	59
	62	0	23	22
	63	0	25	38
	66	0	40	77
	67	0	41	30
	69/1	0	51	33
	69/2	0	26	60
	70	0	09	75
	75/B	0	52	88
	75/A	0	30	85
	76	0	25	02
	77/2	0	43	89
	78	1	04	40
	125/Paiki	0	18	00
	127	0	56	79

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	128	0	22	27		497	0	07	81
	129	0	01	96		500/2	0	11	46
	133	0	71	36		502	0	23	80
	130	0	91	20		501	0	28	84
Koth	1098	0	42	91		503/1	0	32	77
	1096	0	43	18		388	0	74	76
	1095	0	20	07		386	0	59	67
	1094	0	34	61		384/1	0	34	42
	1093	0	33	86		380/1	0	31	63
	820	0	49	42		380/2	0	21	69
	823	0	30	08		365	0	32	17
	822	0	74	34		368	0	15	70
	824	0	02	09		367	0	10	78
	891	0	36	77		366	0	14	59
	894	0	47	50		370	0	20	14
	902	0	81	12		361	0	31	28
	915	1	01	24		362	0	01	22
	977/1	0	77	04		357/1	0	19	53
	977/7	0	00	65		357/2	0	22	09
	977/8	0	53	85		358	0	69	09
	977/9	0	20	23		346	0	00	56
	977/10	0	21	30		347	0	11	12
	977/11	0	18	80		327	0	00	84
	972	0	08	20		348	0	28	31
	974	0	22	80		349	0	15	84
	955	0	28	62		350/1	0	69	09
	956	0	15	71	Rupagarh	33	0	13	78
	957	0	10	75		34	0	21	00
	950	0	12	71		29	0	71	39
	958	0	25	72		27	0	58	14
	959	0	17	93		16	0	49	03
	1018	0	20	41		15	0	80	10
	1014	0	14	92		7/1	0	69	75
	1013/1	0	74	24		202	0	60	07
	1028	0	35	83		207	0	37	77
	1006/1	0	03	38		206	0	04	44
	466	0	28	60		208	0	05	58
	467	0	11	88		182	0	55	57
	482/1	0	01	08		184	0	48	34
	483/1	0	26	40		175	0	58	48
	483/2	0	32	73		176	0	93	44
	484	0	30	42		272	1	23	04
	495/1	0	55	71	Kharanti	271	0	00	96
	495/2	0	00	06					
	496	0	13	56					

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	273	0	36	60		1234	0	24	56
	270	0	55	23		1241	0	03	06
	269	0	34	30		1233	0	18	28
	268	0	21	52		1232	0	15	43
	274	0	09	53		1227	0	25	72
	267	0	11	62		1228	0	03	65
	263	0	88	86		1226	0	07	13
	275	0	29	78		1225	0	08	10
	262	0	02	77		1224	0	06	00
	276	0	01	40		1223	0	07	96
	298	0	39	67		1222	0	14	55
	299	0	02	68		1220	0	07	70
	300	0	58	53		1219	0	28	32
	301	0	28	04		1211	0	16	58
	303	0	02	44		1202	0	28	34
	302	0	37	99		1203	0	05	47
	312	0	32	04		1201	0	03	06
	320	0	90	11		1200	0	45	01
	319	0	41	71		1199	0	01	53
	19	0	19	42		1198	0	12	88
	20	1	29	28		1182	0	46	51
Kaliyapura	56	0	41	04		1183	0	01	11
	55	0	51	10		1154	0	39	86
	53	0	30	53		1102	0	38	09
	52	0	55	86		1103	0	82	01
	51	0	13	33		1097	0	18	72
Simej	740	0	21	13		1111	0	18	28
	732	0	82	23		1094	0	01	78
	733	0	50	37		1112	0	24	05
	726	0	36	04		1043	0	01	00
	727	0	42	40		1041	0	15	28
	722	0	22	07		1042	0	15	34
	718/A	0	21	61		1047	0	56	30
	720	0	22	93		1049	0	45	82
	644	0	01	55		1052	0	36	70
	645	0	10	02		1051	0	48	86
	646/B	0	22	00		1017	0	22	79
	660	0	41	62		1014	0	25	93
	661	0	09	49		1015	0	25	40
	659	0	38	20		1013	0	04	55
	604	0	25	76		1016	0	16	56
	601	0	10	48		1002	0	33	78
	580	0	36	21		1003	0	71	05
Kauka	1239	0	34	45		981	0	16	45
	1240	0	20	80					

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	980	0	13	12	Virpur	45	0	49	91
	979	0	06	74		46/1	0	28	05
	978	0	06	64		46/2	0	13	02
	977	0	03	50		48	0	10	87
	976	0	18	00		49/1	0	00	56
	975	0	23	23	Virdi	91	0	49	20
	973	0	17	20		90	0	15	61
Paldi	50	0	13	57		89	0	30	42
Pisawada	1229	0	64	70		85/1	0	11	81
	1231	0	32	60		86	0	46	79
	1232	0	15	98		81	0	66	92
	1216	0	21	23		37	0	55	51
	1215	0	39	81		74	0	03	15
	1099	0	24	86		73	0	58	36
	1100	0	36	40		72	0	27	02
	1115	0	22	20		71	0	56	83
	1104	0	10	66		42	0	03	38
	1114	0	48	54		67	0	18	33
	1113	0	14	71		66	0	44	45
	1112	0	14	05		65	0	28	18
	1126-Paiki	0	31	16	Girand	164	0	02	89
	1111	0	00	10		165	0	15	91
	1129	0	30	79		166	0	13	39
	1110	0	25	05		167	0	46	76
	1109	0	01	49		169	0	02	20
	1032	0	54	03		168	0	08	06
	1010	0	79	50		212	0	00	03
	953	0	36	76		211	0	16	60
	954	0	46	74		210	0	43	87
	955	0	09	45		209	0	15	75
	971	0	58	81		208	0	05	57
	965	0	14	10		209/A	0	34	41
	960	0	65	64		205	0	23	84
	961	0	70	05		206/A	0	14	10
	962	0	44	02		304	0	38	00
	963	0	23	26		310	0	22	38
	911	0	24	33		307	0	13	86
	908	0	38	42					
	907	0	50	44					
	906	0	54	15					

[File No. R-31015/23/96-OR.II]

K. C. Katoch, Under Secy

पेट्रोलियम और प्राकृतिक गैस मंत्रालय			(1)	(2)	(3)
				262	0.220
नई दिल्ली, 29 अगस्त, 1997				266/2/1	0.040
				266/3	0.020
का. आ. 2164.- केन्द्रीय सरकार को यह प्रतीत होता है कि				267	0.130
लोकहित में यह आवश्यक है कि गुजरात राज्य में बाढीनार से मध्य				268/1	0.100
प्रदेश राज्य में बीना तक पेट्रोलियम उत्पादों के परिवहन के लिए				268/2	0.070
भारत ओमन रिफाइनरीज लिमिटेड द्वारा पाइपलाइन बिछाई जानी				268/3	0.030
चाहिए ;				269	0.190
				273	0.070
और केन्द्रीय सरकार को यह भी प्रतीत होता है कि ऐसी				274/2	0.210
पाइपलाइन बिछाई जानेके प्रयोजन के लिए उक्त भूमि में, जो इस				282	0.010
अधिसूचना से उपाखण्ड अनुसूची में वर्णित है, उपयोग का अधिकार				283	0.200
अर्जित करना आवश्यक है ;				284/1	0.070
				323	0.030
अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज				324/1/1	0.190
पाइपलाइन ( भूमि में उपयोग के अधिकार का अर्जन ) अधिनियम,				325	0.190
1962 ( 1962 या 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त				326	0.030
शक्तियों का प्रयोग करते हुए, उसमें के उपयोग के अधिकार का				327	0.160
अर्जन करने के अपने आशय की घोषणा करती है ;				328	0.250
				332	0.060
उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति,				333	0.470
उस तारीख से, जिसको भारत के राजपत्र में यथाप्रकाशित इस				336/2	0.110
अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती				337	0.010
है, इसीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाने के संबंध				340	0.300
में या उनमें उपयोग के अधिकार का अर्जन करने संबंधी लिखित में				341	0.430
आक्षेप, सक्षम प्राधिकारी, श्री के. एन. दूबे, मध्य भारत परिष्करण				416	0.420
परियोजना, भारत ओमन रिफाइनरीज लिमिटेड, ए-1/3, "प्रशांति",				417	0.260
वेदनगर, साँबेर रोड, उज्जैन, मध्य प्रदेश पिन कोड सं- 456 001,				418	0.160
को कर सकता है।				419	0.330
				422/1	0.030
अनुसूची				422/2	0.100
				425	0.010
तहसील : आगर जिला : झाजापुर राज्य : मध्य प्रदेश				429	0.070
ग्राम का नाम	सर्वे क्रमांक	क्षेत्र		430/1	0.040
		हेक्टर/आरे		430/2	0.330
(1)	(2)	(3)		431/2	0.300
चाचाखेड़ी	260	0.010		432	0.300
	261	0.010			

(1)	(2)	(3)	(1)	(2)	(3)
	452	0.130		48	0.150
	453	0.150		49	0.040
	454	0.400		50	0.210
	455/1	0.050		52	0.480
	456/1	0.110		81	0.010
	489	0.050		82	0.270
	490	0.310		83	0.170
	494	0.340		86	0.140
	495	0.130		88	0.450
चांदनगोव	687	0.070		114	0.010
	688	0.200		116	0.010
	689	0.260		117	0.090
	901	0.030		118	0.240
	933	0.150		119	0.310
	934	0.360		120	0.020
	940	0.060		124	0.380
	941	0.010		130	0.680
	942	0.020		136	0.040
	944	0.210		137	0.010
	956	0.180		138	0.160
	957	0.010		139	0.050
	958	0.240		144	0.050
	960	0.200		145	0.100
	964	0.350		146	0.210
	970	0.240		147	0.020
	971	0.150		148	0.020
	977	0.590		191	0.070
सुतड़ा	32	0.140		203	0.080
	33	0.010		204	0.030
	34	0.190	भरभूजी	178	0.010
	35	0.040		179	0.270
	36/1	0.290		195	0.160
	36/2	0.190			
	37	0.110			
	43	0.050			
	44	0.010			

[ सं. आर - 31015/21/96. ओआर-II ]

के. सी. कटोच, अवर सचिव

## Ministry of Petroleum and Natural Gas

## Schedule

New Delhi, the 29th August, 1997

S.O. 2164.- Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum products from Vadinar in the State of Gujarat to Bina in the State of Madhya Pradesh, pipelines should be laid by the Bharat Oman Refineries Limited;

And whereas, it appears to the Central Government that for the purpose of laying such pipelines, it is necessary to acquire the right of users in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 ( 50 of 1962 ), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within twenty-one days from the date on which the copies of this notification, as published in the gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipelines under the land to Shri K. N. Dubey, the competent authority of Central India Refinery Project of Bharat Oman Refineries Limited, A-1/3, 'Prashanti', Vednagar, Sanwer Road, Ujjain, Madhya Pradesh Pin code No. - 456 001.

Tehsil : Agar Dist : Shajapur State : Madhya pradesh

Name of village	Survey no.	Area Hectare/are
(1)	(2)	(3)
Chachakhedi	260	0.010
	261	0.010
	262	0.220
	266/2/1	0.040
	266/3	0.020
	267	0.130
	268/1	0.100
	268/2	0.070
	268/3	0.030
	269	0.190
	273	0.070
	274/2	0.210
	282	0.010
	283	0.200
	284/1	0.070
	323	0.030
	324/1/1	0.190
	325	0.190
	326	0.030
	327	0.160
	328	0.250
	332	0.060
	333	0.470
	336/2	0.110
	337	0.010
	340	0.300
	341	0.430
	416	0.420
	417	0.260
	418	0.160
	419	0.330
	422/1	0.030
	422/2	0.100

(1)	(2)	(3)	(1)	(2)	(3)
	425	0.010		37	0.110
	429	0.070		43	0.050
	430/1	0.040		44	0.010
	430/2	0.330		48	0.150
	431/2	0.300		49	0.040
	432	0.300		50	0.210
	452	0.130		52	0.480
	453	0.150		81	0.010
	454	0.400		82	0.270
	455/1	0.050		83	0.170
	456/1	0.110		86	0.140
	489	0.050		88	0.450
	490	0.310		114	0.010
	494	0.340		116	0.010
	495	0.130		117	0.090
Chandangaon	687	0.070		118	0.240
	688	0.200		119	0.310
	689	0.260		120	0.020
	901	0.030		124	0.380
	933	0.150		130	0.680
	934	0.360		136	0.040
	940	0.060		137	0.010
	941	0.010		138	0.160
	942	0.020		139	0.050
	944	0.210		144	0.050
	956	0.180		145	0.100
	957	0.010		146	0.210
	958	0.240		147	0.020
	960	0.200		148	0.020
	964	0.350		191	0.070
	970	0.240		203	0.080
	971	0.150		204	0.030
	977	0.590	Bhadbhuji	178	0.010
Sutada	32	0.140		179	0.270
	33	0.010		195	0.160
	34	0.190			
	35	0.040			
	36/1	0.290			
	36/2	0.190			

[ No. R-31015/21/96-OR.II ]

K. C. Katoch, Under Secy.



## पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 29 अगस्त, 1997

का. आ. का. आ. 2165.- केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 1092, तारीख 27 मार्च, 1997 द्वारा पेट्रोलियम के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजनार्थ उक्त अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकारों के अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्रित अधिसूचना की प्रतियां जनता को तारीख 26 अप्रैल, 1997 को उपलब्ध करा दी गई थी;

और उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाना चाहिए;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार अर्जित करने की घोषणा करती है;

यह और कि केन्द्रीय सरकार, उक्त धारा की उप धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार, केन्द्रीय सरकार में निहित होने की बजाए, सभी विलुप्तियों से रहित भारत ओमान रिफाईनरीज़ लिमिटेड में निहित होगा।

## अनुसूची

तालुका: गोधरा - जिला: पंचमहाल		राज्य: गुजरात		
गांव का नाम	सर्वेक्षण सं./ खंड सं.	क्षेत्र हेक्टर	आरे	सेन्टीआरे
(1)	(2)	(3)	(4)	(5)
गोठडा	503	0	44	70
	516	0	31	75
	517	0	00	92
	518	0	03	31
	513	0	10	56
	512	0	29	10
	511	0	30	73
	539	0	44	10
	592	0	43	80
	593	0	46	80
	594	0	12	60
	595	0	14	10
	596	0	15	08
	597	0	14	40
	599	0	13	80
	600	0	12	42
	630	0	01	41
	625	0	03	80
	601	0	10	17
	603	0	08	33
	624	0	03	99
	623	0	05	33
	622	0	10	59
	606	0	00	15
गुसर	615	0	42	66
	614	0	43	80
	120/1	0	25	50
	120/2	0	47	40
	106	0	00	30
	102	0	65	55
	103	0	16	42
	104	0	02	85
	127	0	64	17
	95	0	03	48
	68	0	45	45
	69	0	27	00
	65	0	48	00

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	66	0	14	24		1/52	0	28	65
	58	0	03	82	गवाची	1/74	0	14	85
	64	0	37	25		1/75	0	12	00
	59	0	06	30		7	0	13	42
	63	0	37	04		1/77	0	19	95
	62	0	44	10		1/79	0	26	85
	73	0	02	59		1/1 पैकी	0	33	60
गोली	100पैकी	0	24	95		1/1 पैकी	0	42	15
	100पैकी	0	30	00		1/1 पैकी	0	27	60
	100पैकी	0	56	85		1/52	0	82	95
	100ए/28	0	30	30	वेगनपुर	131/16	0	10	95
	100ए/23	0	37	80		131/18	0	16	80
	100ए/15/2	0	22	95		131/17	0	30	09
	100ए/12/1	0	27	08		131/20	0	09	13
	100ए/12/2	0	25	88		131/19	0	37	35
	100ए/11	0	16	05	हरकुंडी	224/1 पैकी	0	39	30
	100ए/10पैकी	0	35	25	मेहलोल	152/12ए	0	39	75
	100ए/पैकी	0	05	40		152/13ए	0	33	30
	100ए/पैकी	0	09	96		876	0	28	65
	100ए/पैकी	0	26	70		877	0	12	75
	100ए/पैकी	0	04	00		898	0	17	40
	100ए/पैकी	0	29	90		897	0	04	36
	104	0	12	00		893	0	47	54
	103	0	35	40		896	0	55	65
	61	0	33	30		892	0	47	70
	100पैकी	0	10	50	अंबाली	233-ए/6	0	15	60
	60	0	34	50		233-ए/7	0	27	90
	40	0	13	50		233-ए/8	0	37	95
	33/1पैकी	0	12	00		233-ए/9	0	25	80
	33/1पैकी	0	18	75		233-ए/10	0	43	42
	33/2पैकी	0	15	75		233-ए/30	0	05	50
	33/2पैकी	0	05	38		233-ए/31	0	16	58
	33/2पैकी	0	29	40		233-ए/32	0	19	80
	33/2पैकी	0	55	95		233-ए/11	0	00	38
	1/1पैकी	0	30	00		233-ए/34	0	14	55
	1/1 पैकी	0	15	78		233-ए/36	0	99	30
	1/1पैकी	0	38	29		233-ए/40	0	24	70
भीमा	1/35	0	03	57		233-ए/39	0	05	60
	1/36	0	64	30		233-बी/-पैकी	0	41	27
	1/50	0	58	20		233-बी/-पैकी	0	31	25
	1/51	0	59	40		233-बी/-पैकी	0	54	89

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	233-बी/-पैकी	0	24	04		299	0	27	81
	233-बी/-पैकी	0	24	05		298	0	27	60
	233-ए/-पैकी	0	11	38		302	0	15	24
	233-ए/-पैकी	0	11	90		283	0	26	55
	233-ए/-पैकी	0	10	65		325पैकी	0	30	45
	233-ए/-पैकी	0	13	80	गोधरा	674	0	22	68
भामैया	152/6	0	54	60		675	0	09	91
	154पैकी	0	54	60		692	0	46	65
	153/1	0	00	88		691	0	26	70
	160	0	17	00		690पैकी	0	12	45
	255	0	02	98		690पैकी	0	19	05
	149	0	43	95		689	0	47	47
	91पैकी	0	31	65		1001	0	17	18
	92पैकी	0	01	02		1000/1	0	22	53
	88	0	04	43		1000/2	0	18	50
	93	0	71	03		997	0	18	15
	94पैकी	0	04	34		996	0	07	09
	96/3 पैकी	0	01	70		1003	0	54	53
	95/1 पैकी	0	20	85		1006	0	18	37
	83/4	0	01	12		1237	0	38	55
	46/2	0	15	53		1021	0	57	75
	46/1	0	18	45		1070	1	71	11
	46/3	0	00	78		1065	0	52	72
	47/1	0	31	95	गोविंदी	21	0	46	05
	48/1	0	16	80		178	0	13	95
	82	0	01	40		179	0	15	70
	81	0	00	10		180	0	18	30
	72/2	0	12	16		172	0	25	00
	74/3	0	55	14		169	0	11	13
	74/2	0	00	22		167	0	39	54
	73	0	15	42		166	0	05	36
	72/3	0	00	22	कंकुथामला	62	0	21	21
	60/1	0	23	63	जाफराबाद	277	0	68	32
	61/1	0	23	70		276	0	61	28
	61/4	0	00	75		275/1	0	61	95
	71	0	22	86		295	0	19	50
	62/1	0	03	90		294	0	00	90
	62/2/1	0	06	05		299	0	44	55
	62/2/2	0	02	20		303	0	16	62
	297	0	09	13		306	0	48	05
	296	0	27	80		1	0	07	80

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	37/1	0	02	48		423	0	03	39
	37/2	0	42	67		420	0	22	97
कोट डा	240	0	55	55		417/1	0	56	10
	244	0	12	50		411	0	46	20
	241	0	53	05		403	0	18	88
	242	0	07	30		402	0	14	74
	234 पैकी	0	35	55		401	0	16	31
	234 पैकी	0	52	35		400	0	15	60
	221	0	41	87		399 पैकी	0	48	90
	218	0	83	10		398	0	26	70
	183	0	38	70		383	0	48	30
	184	0	60	00		382	0	48	98
	135	0	01	32		375	0	22	20
	115	0	28	20		374	0	16	76
	116/1	0	49	20		372	0	02	56
	118	0	05	67	गढ़	16/1	0	07	74
	117 पैकी	0	18	40		14/1	0	01	13
	106 पैकी	0	23	00	लाड पुर	35	0	18	23
	106 पैकी	0	05	27		34	0	45	30
	105	0	41	63		31	0	51	93
	103/2/2	0	15	30		29/1	0	01	15
	103/2/3	0	19	05		32 पैकी	0	03	38
	267/1	0	05	68		28 पैकी	0	14	85
	102	0	62	70		28 पैकी	0	21	97
	101/1 पैकी	0	32	60		27/3	0	07	33
	101/2 पैकी	0	10	00		27/4	0	22	22
	101/2 पैकी	0	32	65		27/5	0	31	46
	100	0	04	64		27/6	0	01	54
चंचोपा	69	0	55	35		27/9	0	05	05
	66	0	27	84		27/10	0	22	70
	63	0	00	05		27/11	0	11	75
	65	0	00	06		27/12	0	18	25
	64	0	23	80		27/15	0	23	11
	40 पैकी	0	12	20		27/16	0	04	19
	40 पैकी	0	24	40		27/17	0	05	06
चुंदडी	17/1	0	19	40		27/18	0	27	73
	17/2	0	19	35		27/21	0	18	82
एरंडी	432	0	09	00		27/22	0	10	45
	428	0	42	60		27/23	0	13	33
	427	0	52	20		27/26	0	04	40
	422	0	39	72		27/27	0	06	53

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	27/29	0	04	72		158 पैकी	0	41	25
	27/31	0	02	33		159	0	34	50
चंचेलाव	16	0	78	60		160	0	13	82
	17	0	13	95		161	0	00	94
	15	0	48	00		192/4	0	12	30
	20	0	15	00		192/2	0	17	81
	21	0	00	12		193	0	41	69
	22	0	16	05		195/1	0	09	22
	13/पैकी	0	72	66		190/1	0	05	10
	26	0	45	69		189/1	0	39	66
	28	0	69	85		189/2	0	02	73
	25/पैकी	0	00	30		187/1	0	16	50
	29	0	06	05		187/2	0	19	91
केवडीया	59	0	00	60		279/1	0	21	30
	61	0	40	70		279/2	0	40	16
	66	0	17	90		278	0	06	96
	67	0	14	40		276/1	0	13	75
	70	0	23	37		276/2	0	20	25
	71	0	44	28		271/ए	0	31	00
	72	0	22	38		280	0	08	70
	208	0	11	86		270/ए	0	43	92
	82	0	13	83		267	0	56	25
	78	0	55	39		391	0	02	20
	79	0	01	39		392	0	45	65
	106	0	40	27		393	0	26	85
	115	0	20	00		401	0	17	85
	114	0	34	20		13/1	0	44	55
	110	0	27	67		405	0	55	50
	113	0	01	29		18	0	43	65
	111	0	32	85		17	0	12	84
	112	0	02	40	सालीया	41	0	16	50
ओरवाडा	376	0	07	17		42/1	0	29	18
	200	0	15	69		42/4	0	06	78
	199	0	40	65		42/5	0	09	72
	381 पैकी	0	10	00		42/6	0	07	65
	379	0	75	36		42/7	0	04	07
	158 पैकी	0	18	90		15/3	0	09	15

2106 69/97-4.

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	15/4	0	13	05		428	0	14	96
	15/5	0	00	10		353/2	0	07	98
	15/2	0	00	15		429/2	0	17	70
	15/1	0	00	05		430	0	26	87
	16	0	20	93		431	0	06	93
	19	0	33	29		433	0	71	20
	17/1	0	00	31		341	0	09	77
	22पैकी	0	37	23		269	0	01	05
	18	0	03	86		270पैकी	0	17	10
	23	0	43	56		270पैकी	0	17	98
	24/ए	0	40	50		271/ए	0	01	88
	501पैकी	0	02	15		272/1	0	24	75
	500	0	25	02		281/1	0	18	21
	490/1+2	0	26	50		281/2	0	19	82
	489	0	45	12		280	0	10	09
	488	0	37	80		283	0	09	10
	392	0	12	46		279	0	01	98
	395/1	0	07	94		284	0	17	02
	393	0	40	80		285	0	32	92
	400/1	0	19	67		278/1	0	00	48
	400/2	0	03	21	खाबडा	45	0	38	40
	401/4	0	02	36		46	0	28	20
	401/5	0	18	96		48	0	36	20
	402	0	41	43		78	0	36	30
	403	0	20	21		77	0	23	10
	415	0	12	90		76/1	0	25	39
	414	0	13	80		76/2	0	07	13
	416	0	52	75		71	0	14	55
	417	0	35	55		74/1	0	00	40
	418/1	0	25	51		72/2	0	59	99
	418/2	0	07	50		72/1	0	04	52
	418/3	0	06	85		111	0	67	20
	419/1	0	05	38		114/3	0	27	60
	371/5	0	03	90		115	0	28	50
	371/4	0	09	49					
	362	0	23	95					
	427ए	0	03	96					

[फा. सं. आर-31015/25/96-ओआर. II]

के. सी. कटोच, अवर सचिव

## Ministry of Petroleum and Natural Gas

New Delhi, the 29th August, 1997

**S.O. 2165.-** Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S. O. 1092 dated the 27th March 1997, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the lands specified in the Schedule appended to that notification for the purpose of laying pipeline for the transport of petroleum;

And whereas, the copies of the said gazette notification were made available to the public on the 26th day of April, 1997;

And whereas, the competent authority in pursuance of sub-section (1) of section 6 of the said Act has made his report to the Central Government;

And whereas, the Central Government after considering the said report is satisfied that the right of user in the lands specified in the Schedule appended to this notification should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification are hereby acquired;

And further in exercise of the powers conferred by sub-section (4) of the said section, the Central Government hereby directs that the right of user in the said lands shall instead of vesting in the Central Government, vest, free from all encumbrances, in the Bharat Oman Refineries Limited;

Schedule				
Taluka: Godhra District: Panchmahal State: Gujarat				
Name of Village	Survey/Block Number	Area		
		Hectare	Are	Centare
(1)	(2)	(3)	(4)	(5)
Gothada	503	0	44	70
	516	0	31	75
	517	0	00	92
	518	0	03	31
	513	0	10	56
	512	0	29	10
	511	0	30	73
	539	0	44	10
	592	0	43	80
	593	0	46	80
	594	0	12	60
	595	0	14	10
	596	0	15	08
	597	0	14	40
	599	0	13	80
	600	0	12	42
	630	0	01	41
	625	0	03	80
	601	0	10	17
	603	0	08	33
Gusar	624	0	03	99
	623	0	05	33
	622	0	10	59
	606	0	00	15
	615	0	42	66
	614	0	43	80
	120/1	0	25	50
	120/2	0	47	40
	106	0	00	30
	102	0	65	55
	103	0	16	42
	104	0	02	85
	127	0	64	17
	95	0	03	48
	68	0	45	45
	69	0	27	00

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	65	0	48	00		1/50	0	58	20
	66	0	14	24		1/51	0	59	40
	58	0	03	82		1/52	0	28	65
	64	0	37	25	Gavachi	1/74	0	14	85
	59	0	06	30		1/75	0	12	00
	63	0	37	04		7	0	13	42
	62	0	44	10		1/77	0	19	95
	73	0	02	59		1/79	0	26	85
Goli	100Paiki	0	24	95		1/1 Paiki	0	33	60
	100Paiki	0	30	00		1/1 Paiki	0	42	15
	100Paiki	0	56	85		1/1 Paiki	0	27	60
	100A/28	0	30	30		1/52	0	82	95
	100A/23	0	37	80	Veganpur	131/16	0	10	95
	100A/15/2	0	22	95		131/18	0	16	80
	100A/12/1	0	27	08		131/17	0	30	09
	100A/12/2	0	25	88		131/20	0	09	13
	100A/11	0	16	05		131/19	0	37	35
	100A/10Paiki	0	35	25	Harkundi	224/1 Paiki	0	39	30
	100A/Paiki	0	05	40	Mehelol	152/12A	0	39	75
	100A/Paiki	0	09	96		152/13A	0	33	30
	100A/Paiki	0	26	70		876	0	28	65
	100A/Paiki	0	04	00		877	0	12	75
	100A/Paiki	0	29	90		898	0	17	40
	104	0	12	00		897	0	04	36
	103	0	35	40		893	0	47	54
	61	0	33	30		896	0	55	65
	100Paiki	0	10	50		892	0	47	70
	60	0	34	50	Ambali	233-A/6	0	15	60
	40	0	13	50		233-A/7	0	27	90
	33/1Paiki	0	12	00		233-A/8	0	37	95
	33/1Paiki	0	18	75		233-A/9	0	25	80
	33/2Paiki	0	15	75		233-A/10	0	43	42
	33/2Paiki	0	05	38		233-A/30	0	05	50
	33/2Paiki	0	29	40		233-A/31	0	16	58
	33/2Paiki	0	55	95		233-A/32	0	19	80
	1/1Paiki	0	30	00		233-A/11	0	00	38
	1/1 Paiki	0	15	78		233-A/34	0	14	55
	1/1Paiki	0	38	29		233-A/36	0	99	30
Bhima	1/35	0	03	57		233-A/40	0	24	70
	1/36	0	64	30		233-A/39	0	05	60



(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	233-B/-Paiki	0	41	27		62/2/1	0	06	05
	233-B/-Paiki	0	31	25		62/2/2	0	02	20
	233-B/-Paiki	0	54	89		297	0	09	13
	233-B/-Paiki	0	24	04		296	0	27	80
	233-B/-Paiki	0	24	05		299	0	27	81
	233-A/-Paiki	0	11	38		298	0	27	60
	233-A/-Paiki	0	11	90		302	0	15	24
	233-A/-Paiki	0	10	65		283	0	26	55
	233-A/-Paiki	0	13	80		325Paiki	0	30	45
Bhamaiya	152/6	0	54	60	Godhra	674	0	22	68
	154Paiki	0	54	60		675	0	09	91
	153/1	0	00	88		692	0	46	65
	160	0	17	00		691	0	26	70
	255	0	02	98		690Paiki	0	12	45
	149	0	43	95		690Paiki	0	19	05
	91Paiki	0	31	65		689	0	47	47
	92Paiki	0	01	02		1001	0	17	18
	88	0	04	43		1000/1	0	22	53
	93	0	71	03		1000/2	0	18	50
	94Paiki	0	04	34		997	0	18	15
	96/3 Paiki	0	01	70		996	0	07	09
	95/1 Paiki	0	20	85		1003	0	54	53
	83/4	0	01	12		1006	0	18	37
	46/2	0	15	53		1237	0	38	55
	46/1	0	18	45		1021	0	57	75
	46/3	0	00	78		1070	1	71	11
	47/1	0	31	95		1065	0	52	72
	48/1	0	16	80	Govindi	21	0	46	05
	82	0	01	40		178	0	13	95
	81	0	00	10		179	0	15	70
	72/2	0	12	16		180	0	18	30
	74/3	0	55	14		172	0	25	00
	74/2	0	00	22		169	0	11	13
	73	0	15	42		167	0	39	54
	72/3	0	00	22		166	0	05	36
	60/1	0	23	63	Kankuthamla	62	0	21	21
	61/1	0	23	70	Jafrabad	277	0	68	32
	61/4	0	00	75		276	0	61	28
	71	0	22	86		275/1	0	61	95
	62/1	0	03	90		295	0	19	50

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
Kotada	294	0	00	90	Chundadi	17/1	0	19	40
	299	0	44	55		17/2	0	19	35
	303	0	16	62	Airandi	432	0	09	00
	306	0	48	05		428	0	42	60
	1	0	07	80		427	0	52	20
	37/1	0	02	48		422	0	39	72
	37/2	0	42	67		423	0	03	39
	240	0	55	55		420	0	22	97
	244	0	12	50		417/1	0	56	10
	241	0	53	05		411	0	46	20
	242	0	07	30		403	0	18	88
	234 Paiki	0	35	55		402	0	14	74
	234 Paiki	0	52	35		401	0	16	31
	221	0	41	87		400	0	15	60
	218	0	83	10		399Paiki	0	48	90
	183	0	38	70		398	0	26	70
	184	0	60	00		383	0	48	30
	135	0	01	32		382	0	48	98
	115	0	28	20		375	0	22	20
	116/1	0	49	20		374	0	16	76
	118	0	05	67		372	0	02	56
	117Paiki	0	18	40	Ghad	16/1	0	07	74
	106Paiki	0	23	00		14/1	0	01	13
	106Paiki	0	05	27	Ladpur	35	0	18	23
	105	0	41	63		34	0	45	30
	103/2/2	0	15	30		31	0	51	93
	103/2/3	0	19	05		29/1	0	01	15
	267/1	0	05	68		32Paiki	0	03	38
	102	0	62	70		28Paiki	0	14	85
	101/1Paiki	0	32	60		28Paiki	0	21	97
	101/2Paiki	0	10	00		27/3	0	07	33
	101/2Paiki	0	32	65		27/4	0	22	22
	100	0	04	64		27/5	0	31	46
Chanchopa	69	0	55	35		27/6	0	01	54
	66	0	27	84		27/9	0	05	05
	63	0	00	05		27/10	0	22	70
	65	0	00	06		27/11	0	11	75
	64	0	23	80		27/12	0	18	25
	40Paiki	0	12	20		27/15	0	23	11
	40Paiki	0	24	40		27/16	0	04	19

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	27/17	0	05	06		199	0	40	65
	27/18	0	27	73		381Paiki	0	10	00
	27/21	0	18	82		379	0	75	36
	27/22	0	10	45		158Paiki	0	18	90
	27/23	0	13	33		158Paiki	0	41	25
	27/26	0	04	40		159	0	34	50
	27/27	0	06	53		160	0	13	82
	27/29	0	04	72		161	0	00	94
	27/31	0	02	33		192/4	0	12	30
Chanchelav	16	0	78	60		192/2	0	17	81
	17	0	13	95		193	0	41	69
	15	0	48	00		195/1	0	09	22
	20	0	15	00		190/1	0	05	10
	21	0	00	12		189/1	0	39	66
	22	0	16	05		189/2	0	02	73
	13/P	0	72	66		187/1	0	16	50
	26	0	45	69		187/2	0	19	91
	28	0	69	85		279/1	0	21	30
	25/Paiki	0	00	30		279/2	0	40	16
	29	0	06	05		278	0	06	96
Kevdiya	59	0	00	60		276/1	0	13	75
	61	0	40	70		276/2	0	20	25
	66	0	17	90		271/A	0	31	00
	67	0	14	40		280	0	08	70
	70	0	23	37		270/A	0	43	92
	71	0	44	28		267	0	56	25
	72	0	22	38		391	0	02	20
	208	0	11	86		392	0	45	65
	82	0	13	83		393	0	26	85
	78	0	55	39		401	0	17	85
	79	0	01	39		13/1	0	44	55
	106	0	40	27		405	0	55	50
	115	0	20	00		18	0	43	65
	114	0	34	20		17	0	12	84
	110	0	27	67	Saliya	41	0	16	50
	113	0	01	29		42/1	0	29	18
	111	0	32	85		42/4	0	06	78
	112	0	02	40		42/5	0	09	72
Orvada	376	0	07	17		42/6	0	07	65
	200	0	15	69		42/7	0	04	07

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
	15/3	0	09	15		427A	0	03	96
	15/4	0	13	05		428	0	14	96
	15/5	0	00	10		353/2	0	07	98
	15/2	0	00	15		429/2	0	17	70
	15/1	0	00	05		430	0	26	87
	16	0	20	93		431	0	06	93
	19	0	33	29		433	0	71	20
	17/1	0	00	31		341	0	09	77
	22Paiki	0	37	23		269	0	01	05
	18	0	03	86		270Paiki	0	17	10
	23	0	43	56		270Paiki	0	17	98
	24/A	0	40	50		271/A	0	01	88
	501Paiki	0	02	15		272/1	0	24	75
	500	0	25	02		281/1	0	18	21
	490/1+2	0	26	50		281/2	0	19	82
	489	0	45	12		280	0	10	09
	488	0	37	80		283	0	09	10
	392	0	12	46		279	0	01	98
	395/1	0	07	94		284	0	17	02
	393	0	40	80		285	0	32	92
	400/1	0	19	67		278/1	0	00	48
	400/2	0	03	21	Khabada	45	0	38	40
	401/4	0	02	36		46	0	28	20
	401/5	0	18	96		48	0	36	20
	402	0	41	43		78	0	36	30
	403	0	20	21		77	0	23	10
	415	0	12	90		76/1	0	25	39
	414	0	13	80		76/2	0	07	13
	416	0	52	75		71	0	14	55
	417	0	35	55		74/1	0	00	40
	418/1	0	25	51		72/2	0	59	99
	418/2	0	07	50		72/1	0	04	52
	418/3	0	06	85		111	0	67	20
	419/1	0	05	38		114/3	0	27	60
	371/5	0	03	90		115	0	28	50
	371/4	0	09	49					
	362	0	23	95					

[File No. R-31015/25/96-OR.II]

K. C. Katoch, Under Secy.

## पेट्रोलियम और प्राकृतिक गैस संवर्धन

नई दिल्ली, 21 अगस्त, 1997

का. आ. 2166.—पेट्रोलियम और खनिज पाइपलाइन अधिनियम, 1962 की धारा 17 के अंतर्गत 'पेट्रोलियम पाइपलाइन (भूमि उपयोग के अधिकार का अर्जन) नियम, 1963 के स्पष्टीकरण के अंतर्गत नियम 4 के प्रावधान के अनुसरण में, मै एन. एम. परमार, सक्षम प्राधिकारी, गैस अथॉरिटी ऑफ इंडिया लिमिटेड वडोदा के परामर्श से जिसे उस क्षेत्र में भूमि के उपयोग का अधिकार प्रदान किया गया है अथवा उस क्षेत्र में पाइपलाइन का स्वामित्व प्रदान है, जैसा की मामला हो, एतद्वारा घोषणा करता हूँ कि गैस पाइपलाइन के बिछाने संबंधी कार्य के समापन की तारीख नीचे दी गई अनुसूची के कॉलम-8 में दिए अनुसार है :—

## अनुसूची

क्रम सं.	पाइपलाइन का नाम	ग्राम का नाम	तहसील	जिला	राजपत्र में खंड 6 (i) के तहत प्रकाशन की तारीख	का. आ. सं.	समापन कार्य की तारीख
1.	गांधार डबका पा/ला के समीप गांव मासर रोड से मधुसूदन सेरामिक इंडस्ट्रीज	कान्जत	पादरा	वडोदरा	31-8-96	613 (ई)	12-01-97

[सं. एल.-14016/02/96-जी. पी.]

आई. एस. एन. प्रसाद, उप सचिव (प्रा. गैस)

## MINISTRY OF PETROLEUM &amp; NATURAL GAS

New Delhi, the 21st August, 1997

S.O. 2166.—In pursuance of proviso to Rule 4 under explanation of the Petroleum Pipeline (Acquisition of Right of User in Land) Rules, 1963 framed under section 17 of the Petroleum and Minerals Pipeline Act 1962, I. N.M. Parmar, Competent Authority in consultation with the Gas Authority of India Ltd., Baroda with whom the Right of User in the land in that area has vested or ownership of the pipeline in that area vest as the case may be, hereby declare the date of termination of laying of gas pipelines as mentioned in column 8 of the schedule appended below:

## SCHEDULE

Sl. No.	Name of the Pipeline	Name of the Village	Teh.	Distt.	Date of publication under 6(i)	S.O. No.	Date of Termination of Opera
1.	Gandhar, Dabka P/L Nr. Village Masar Road to Mahusudan Ceramic Ind.	Kanzat	Padra	Vadodara	31-8-96	613(E)	12-01-97

[No. L-14016/02/96-G.P.]

I, S. N. Prasad, Dy. Secy. (NG)

नई दिल्ली, 29 अगस्त, 1997

का. आ. 2147.—पेट्रोलियम और खनिज पाइपलाइन अधिनियम, 1962 की धारा 17 के अंतर्गत पेट्रोलियम पाइपलाइन (भूमि उपयोग के अधिकार का अर्जन) नियम, 1963 के स्पष्टीकरण के अंतर्गत नियम 4 के प्रावधान के अनुसरण में, मैं एन. एम. परमार, महत्त्व प्राधिकारी, गैस प्रथारिटी ऑफ इंडिया लिमिटेड, बड़ौदा के परामर्श में, जिसे उस क्षेत्र में भूमि के उपयोग का अधिकार प्रदान किया गया है अथवा उस क्षेत्र में पाइपलाइन का स्वामित्व प्रदान है, जैसा भी मामला हो, एतद्वारा घोषणा करता हूँ कि गैस पाइपलाइन के बिछाने संबंधी कार्य के समापन की तारीख तय की गई अनुसूची के कॉलम-8 में दिए अनुसार है:—

## अनुसूची

क्रम सं.	पाइपलाइन का नाम	ग्राम का नाम	तहसील	जिला	राजपत्र में खंड 6(i) के तहत प्रावधान की तारीख	का. आ. सं.	समापन कार्य की तारीख
1	2	3	4	5	6	7	8
1.	गंधार—एन टी. पी. सी. पाइपलाइन टैप ऑफ से मैसर्स जी. टी. ई. सी.	परिएज त्रालसा कोठी	भरुच	भरुच	24-2-97	142 (अ)	14-6-97

[सं० एल.-14016/8/96-जी. पी.]

आई. एम. एन. प्रसाद, उप सचिव (प्रा० गैस)

New Delhi, the 29th August, 1997

S.O.2167.—In pursuance of proviso to Rule 4 under explanation of the Petroleum Pipelines (Acquisition of Right of User in Land) Rules, 1963 framed under section 17 of the Petroleum and Minerals Pipeline Act 1962, I, N.M. Parmar, Competent Authority in consultation with the Gas Authority of India Ltd., Baroda with whom the Right of User in the land in that area has vested or ownership of the pipeline in that area vest as the case may be, hereby declare the date of termination of laying of gas pipelines as mentioned in column 8 of the schedule appended below:

## SCHEDULE

Sl. No.	Name of the Pipeline	Name of the Villages	Teh.	Distt.	Date of Publication under 6(i)	S.O. No.	Date of Termination of opera
1	2	3	4	5	6	7	8
1.	Gandhar NTPC P/L Tap off to M/S GTEC	Pariyej Tralsas Kothi	Bharuch	Bharuch	24-2-97	142(E)	14-6-97

[No. L-14016/8/96-G.P.]

I.S.N. PRASAD, Dy. Secy. (NG)

## संस्कृति विभाग

## (भारतीय पुरातत्व सर्वेक्षण)

नई दिल्ली, 22 अगस्त, 1997

## (पुरातत्व)

का. आ. 2168.—केन्द्रीय सरकार ने, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, 1958 (1958 का 24) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) की अपेक्षा-नुसार भारत सरकार के संस्कृति विभाग (भारतीय पुरातत्व सर्वेक्षण) की अधिसूचना सं. का. आ. 374 (अ) तारीख 9 मई, 1997 द्वारा, जो भारत के राजपत्र, भाग 2, खण्ड 3, उपखण्ड (ii), तारीख 12 मई, 1997, में प्रकाशित की गई थी, अनुसूची में विनिर्दिष्ट संस्मारक को राष्ट्रीय महत्व का घोषित करने के अपने आशय को दो मास की सूचना दी थी और उम अधिसूचना की एक प्रति उक्त संस्मारक के समीप सहज दृश्य स्थान पर लगा दी गई थी;

और उक्त राजपत्र 30 मई, 1997 को जनता को उपलब्ध करा दिया गया था।

और केन्द्रीय सरकार को जनता से कोई आक्षेप प्राप्त नहीं हुआ है।

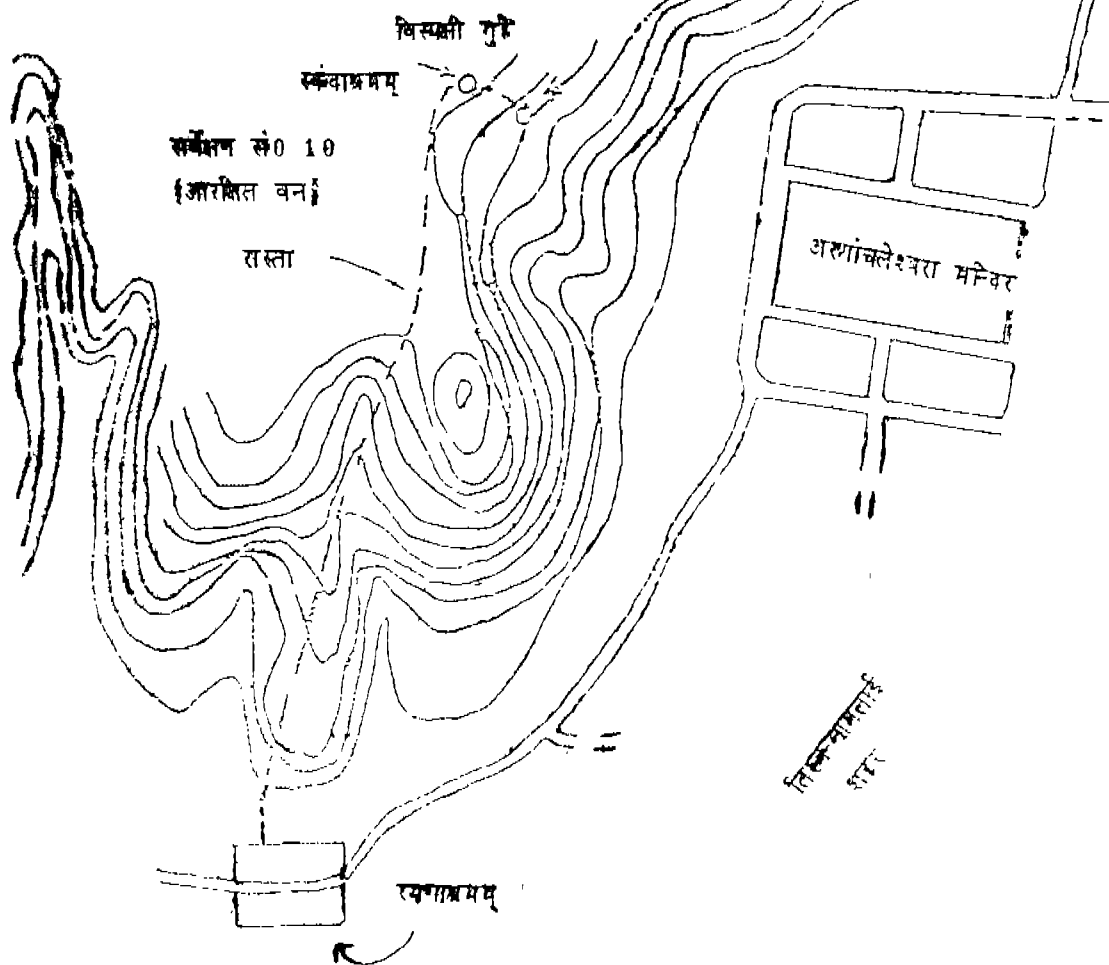
अतः, अब केन्द्रीय सरकार उक्त अधिनियम की धारा 4 की उपधारा (3), द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, इससे उपाबद्ध अनुसूची में विनिर्दिष्ट प्राचीन संस्मारक को राष्ट्रीय महत्व का होना घोषित करती है।

## अनुसूची

राज्य का नाम	जिला	तालुक	परिक्षेत्र	प्राचीन संस्मारक का नाम
1	2	3	4	5
तमिलनाडु	तिरुवनमलाई सम्बुवरमर	तिरुवनमलाई	तिरुवनमलाई	नीचे उद्धृत स्थल रेखांक में दर्शाए गए अनुसार स्कंदाश्रमम् से रमणाश्रमम् को जाने वाले पथ सहित स्कंदाश्रमम् और विरुपक्षि गुहै नामक दो प्राकृतिक गुफाएं।

संरक्षण में सम्मिलित किए जाने वाले सर्वेक्षण संख्यांक	क्षेत्र	सीमाएं	स्वामित्व	टिप्पणियां
6	7	8	9	10
सर्वेक्षण संख्यांक 10 (भाग)	रास्ता 7536 वर्ग मीटर स्कंदाश्रमम् 488 वर्ग मीटर विरुपक्षि गुहै 576 वर्ग मीटर योग 8560 वर्ग मीटर या 0.856 हेक्टेयर या 2.11 एकड़	उत्तर : सर्वेक्षण संख्यांक : 10 (भाग), पूर्व : सर्वेक्षण संख्यांक : 10 (भाग), दक्षिण : सर्वेक्षण संख्यांक : 10 (भाग) और सर्वेक्षण संख्यांक : 531, पश्चिम : सर्वेक्षण संख्यांक : 10 (भाग)।	सरकारी आरक्षित वन	

प्रकृतिक गुणवत्ता जो स्थानीय रूप से स्कंदाग्रमम् और बिस्फली  
गुहे तिल्लन्यामलाई, मिला-तिल्लन्यामलाई ताम्बूरयार के  
रूप में जानी जाती है, को दर्शाने वाला स्थल रेखांक :





DEPARTMENT OF CULTURE  
(ARCHAEOLOGICAL SURVEY OF INDIA)

New Delhi, the 22nd August, 1997

(ARCHAEOLOGY)

S.O. 2168.—Whereas by the notification of the Government of India in the Department of Culture (Archaeological Survey of India) number S.O. 374(E) dated, the 9th May, 1997 published in Part II, Section 3, Sub-section (ii) of the Gazette of India dated the 12th May, 1997, the Central Government gave two months' notice of its intention to declare the ancient monument specified in the Schedule below to be of national importance;

And whereas a copy of the said notification was affixed in a conspicuous place near the said monument as required by sub-section (1) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

And whereas copies of the said Gazette notification were made available to the public on the 30th May, 1997;

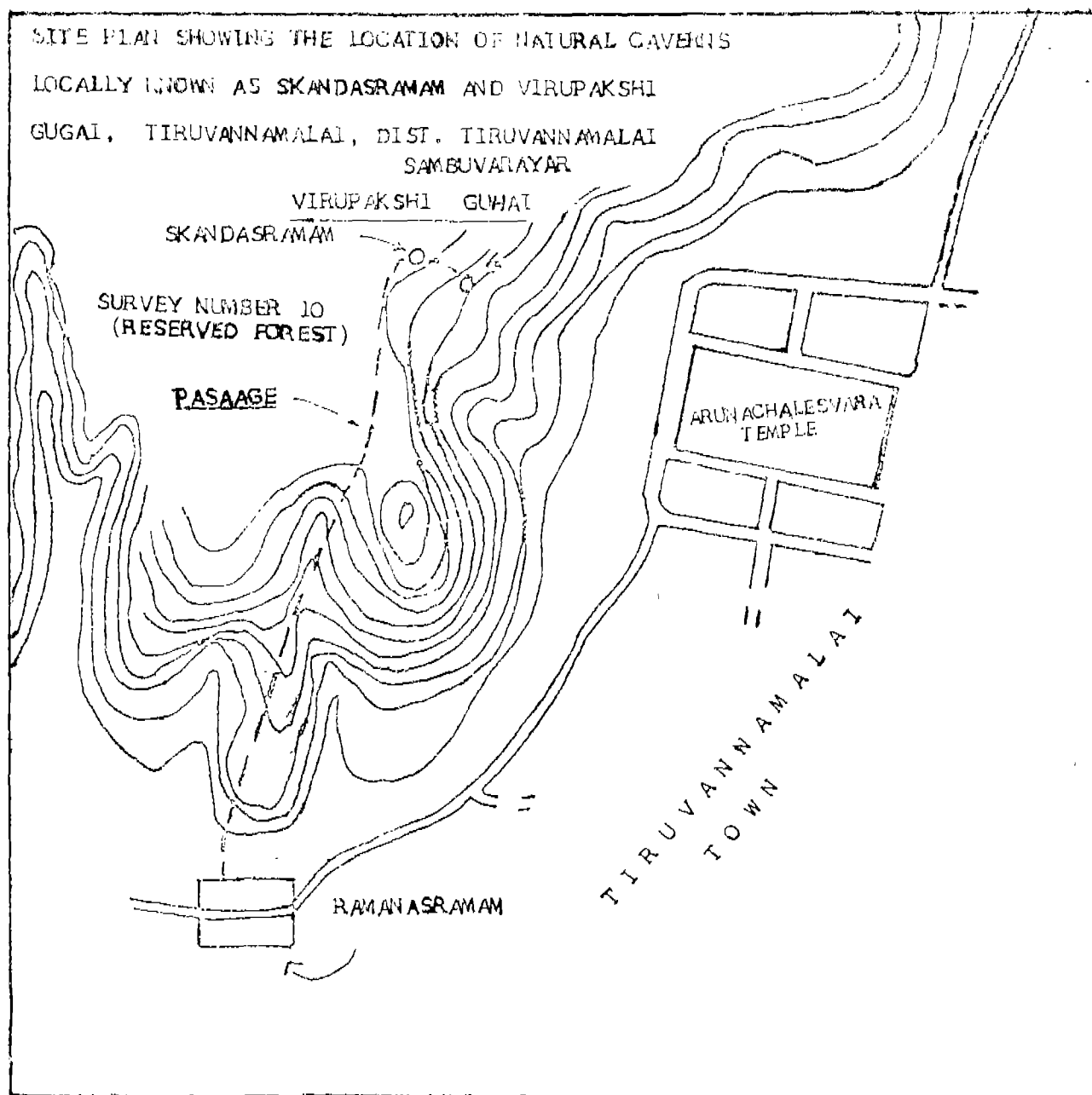
And whereas no objection have been received to the making of such declaration from any person by the Central Government;

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby declares the said ancient monument to be of national importance.

SCHEDULE

State	District	Taluk	Locality	Name of ancient monument
1	2	3	4	5
Tamil Nadu	Tiruvannamalai Sambuvayar	Tiruvannamalai	Tiruvannamalai	Two natural caverns known as Skandasramam and Virupakshi Guhai with the passage leading to Skandasramam from Ramanasramam as shown in the Site Plan reproduced below.

Survey number to be included under protection	Area	Boundaries	Ownership	Remarks
6	7	8	9	10
Survey number 10 (Part)	Passage 7536 Square metres Skandasramam 448 Square metres Virupakshi Guhai 576 Square metres Total : 8560 square metres or 0.856 Hactares or 2.11 Acres	North : Survey number 10 (Part); East: Survey number 10 (Part) South : Survey number 10 (Part) and Survey number 531; West : Survey number 10 (Part)	Government reserved forest	



अस. संवर्धन

नई दिल्ली, 6 अगस्त, 1997

का.अ. 2169—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंटरनेशनल एयरपोर्ट्स अथॉरिटी ऑफ इंडिया के पत्रकारों के संबंध निधियों और उनके कामचारी के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 2, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-97 को प्राप्त हुआ था।

[सं. एन 11011/1/91-आई. आर. (विवाद) भाग-1]

वी. ए. म. टॉलड, डेस्क अधिकारी

## MINISTRY OF LABOUR

New Delhi, the 6th August, 1997

S.O. 2169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of International Airport Authority of India and their workman, which was received by the Central Government on the 6-8-97.

[No. L-11011/1/91-IR (Misc.) Part-I]

B. M. DAVID, Desk Officer

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 MUMBAI

PRESENT: Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/50 of 1991

Employers in relation to the management of International Airports Authority of India, Bombay.

AND

THEIR WORKMEN

## APPEARANCES:

For the Employer—Shri Shamrao S. Patil Advocate.

For the workmen—Shri B. N. Dongre, Advocate.

Mumbai, dated 17th July, 1997

## AWARD—PART-I

The Government of India, Ministry of Labour by its Order No. L-11011/1/91-IR (Misc.) dtd. 13-12-91, had referred to the following Industrial Disputes for adjudication.

“Whether the action of the management of International Airport Authority of India, Bombay in terminating the services of Mrs. Radha Chandrashekar, Airport Hostess with effect from 13-6-89 is legal and justified? If not, to what relief the workman is entitled to?”

2. Radha Chandrashekar filed a statement of claim at Exhibit-2. She was appointed as a lady assistant (Flight information) w.e.f. 9-10-85. She applied for leave from 13-6-89 as her husband who was abroad was ill and she was to attend him. She approached B. N. Singh who was incharge at that time, asked her to work for a month and then proceed on leave. She explained her difficulties to him and requested for recommendation for the leave. Her application was recommended by Mr. Singh. When she was about to board the flight a letter was delivered to her which she opened after she reached the foreign country and came to know that her leave was refused. The work person contended that she informed the International Airports Authority of India, Bombay (herein after referred as an Authority) regarding her inability to attend the duty due to her husbands sickness. Later on she also requested for leave on her personal sickness. She requested on other grounds for grant of leave.

3. To her utter surprise the authority passed an order dated 6-10-89 terminating her services w.e.f. 13-6-89. Then she approached the union and demanded reinstatement in service and raised an Industrial Dispute. It is averred that the termination is vindictive, unjust and wrongful. It is submitted striking of her name from the roll means a retrenchment. The authority did not follow the provisions of retrenchment as contemplated under the Industrial Disputes Act of 1947. It is submitted that she was not given an opportunity to be heard in the matter and the order of termination is without holding a domestic inquiry and in utter disregard to the principles of Natural Justice.

4. The workperson pleaded that the regulations called the International Airport Authority of India employees (conduct, discipline and appeal) regulations 1987 had come into force w.e.f. 7-1-87. Those regulations have been approved in 1987 and published in the Government gazette. It is submitted that the authority did not follow the regulations. There is no provisions in the regulations under which it can be presumed that the work person abandoned the service. It is averred that, that regulation prescribed unauthorised absence as a misconduct. If that is so the termination of service on the said ground amounts to inflicting retrenchment which provides detailed inquiry which is not done in the matter. Therefore the termination is illegal. It is pleaded that the work person is interested in the job and had not intention to abandon the same. The inference which is drawn by the authority is incorrect. It is asserted that the order of terminating the services with retrospective effect is illegal. Under such circumstances it is prayed that she may be reinstated in service to her original post with continuity of service alongwith full back wages.

5. The authority resisted the claim by the written statement Exhibit-3. It is pleaded that the work person is habitual of remaining absent without sanctioned leave. It is submitted that she was informed regarding the rejection of her leave before she boarded the plane for going abroad. It is denied that Mr. Singh recommended her leave application for sanc-

tion. It is submitted that several telegrams were sent to her to join the duties but she did not avail of the opportunity. In the result the management was right to inter that she abandoned the services as contemplated under regulations 31(2)(VI) of the International Airport Authority of India (general conditions of service) regulations (here in after referred to as the service regulations) and effected termination of service. It is submitted that the contention of the work person that conduct, discipline and appeal regulations are applicable to her case is incorrect.

6. The Authority pleaded that the dispute raised is an Industrial Dispute contemplated under section 2K of the Act and the work person has no locus standi in the reference. Under such circumstances the reference is not tenable.

7. The Authority contended that as the work person abandoned the service there is no question of following the provisions of retrenchment. It is denied that the termination is illegal. It is pleaded that the work person may justify her action of remaining absent without permission from 13-6-89 onwards against the office note dated 9-6-89 by adducing evidence before the Tribunal. It is averred that the work person is not interested in the job and it is wrong to say that she had no independent service of maintenance. For all these reasons it is submitted that the reference may be answers in favour of the authority.

8. Later on the work person gave an application Exhibit-10 contending that the union may be allowed to file a statement of claim as the earlier statement of claim was filed by the work person. That application was allowed and the Branch secretary of International Airport Authority of India workers union filed a statement of claim alongwith that application. It is identical of the statement of claim filed by the workman.

9. The authority again filed a written statement at Exhibit-12 taking some contentions again. It also pleaded that the dispute between the management and the work persons being prime facie an individual dispute in order to becom the same as an Industrial Dispute as defined under section 2K of the Act it has to be established that the union had an authority to represent the work person whose cause now it is espousing. It is submitted that the union had no such authority to espouse the cause of the work person. Hence the dispute raised by the union is not an Industrial Dispute in terms of section 2K of the Act.

10. My Learned Predecessor framed issues at Exhibit-4. Today I have framed additional issue regarding the tenability of the reference. The issues and my findings there on are as follows :

Issues	Findings
1. Whether the order of the management terminating the service of the workman lady w.e.f. 13-6-89 is unjust and illegal for the different or any of the reasons urged by the lady in her statement of claim?	Yes.
1A. Whether the reference is tenable?	Yes.

2. Whether the termination of the services of the said lady amounted to her retrenchment from service?

Does not survive.

3. If so, whether the management has complied with the provisions of section 25F of the Industrial Disputes Act, 1947, before terminating her services?

If survives, No

4. Whether the termination of the service of the said lady is in contravention of the provisions contained in the International Airports Authority of India Employees (conduct, discipline and Appeal) Regulations, 1987?

Does not arise.

5. Whether the said lady herself had abandoned her service with the management?

Part-II Award.

6. Whether the action of the management of International Airports Authority of India, Bombay in terminating the services of Mrs. Radha Chandrashekhar Airport Hostess with effect from 13-6-89 is legal and justified?

Part-II Award.

7. If not, to what relief the workman is entitled?

Part. II Award.

8. What Award ?

As per Part-II. Award

#### REASONS

11. The work person Radha had filed a prushis at Exhibit-5, that she does not want to lead any oral evidence. Later on the union filed a statement of claim and at the time of evidence it also filed apurshis (Ex-14) that they do not want to lead any oral evidence. On the other hand the authority examined Dewakar Goel (Exhibit-16) the senior personal Manager and Vishwanath Daghdhu Kehtam (Ex-21) a detective to support their claim. They relied upon the various documents produced on record.

12. Mr. Patil, the Learned advocate for the authority argued that the dispute which is raised is not an Industrial Dispute within the meaning of Section 2K of the Act and therefore the reference is not tenable. He had taken this contention in the written statement.

13. It is not in dispute the letter of demand dated 9-11-89 for reinstatement of the work person was served on the authority by International Airports Authority of India workers union, Bombay. That

union was party in the conciliation proceedings. The conciliation officer recorded the failure report dated 22-3-91. He stated that the dispute was within the management of the authority and the union. The Government in its order also mentions that the Industrial Dispute exists between the employers in relation to the management of the authority and their workmen in respect of the matters specified in the schedule thereof. It is contended that the Industrial Disputes espoused by the union is under section 2-K of the Industrial Disputes Act 1947. The work person had no locus standi and the claim which is filed by her is without any authority. Later on when the union filed a statement of claim in the written statement the contention was taken by the authority. It is pleaded that prime facie the dispute is an Industrial Dispute, and to espouse the same the union has to establish that it has an authority to represent the work person. It is further submitted that the union had no authority to espouse the cause of the work person. Hence the dispute raised by the union is not an Industrial Dispute in terms of section 2-K of the Act.

14. Even though the contention was taken that the union had no authority to espouse the cause of the work person the union had not submitted any documentary evidence that it has an authority to represent it. There is also no other document to show that a group of workmen in the category of work person collectively supporting her case.

15. The work person R. Chandrashekar was treated to be absconding from duty voluntarily out of her own accord and accordingly her name is struck off from the roll of IAAI. w.e.f. 13-6-1989 as seen from the order dated 6-10-1989. In other words she is no more in service. Her case falls as contemplated under section 2-A of the Industrial Disputes Act of 1947.

16. Mr. Patil, the Learned Advocate for the authority submitted that to become dispute as an Industrial Dispute there must be a collective support from a considerable or substantial number of workmen. That is what is observed in *Visalakshi Mills Ltd. Vs. Labour Court, Madurai*, 1962 FLR. 144. It is observed where there is no evidence of the workmen collectively acting and supporting the individual dispute the Act obviously can have no application. The same view finds place in *Nellai Cotton Mills Private Ltd. Vs. Labour Court Madurai* 1965 I. LLJ. In *Bombay Union of Journalists Vs. Hindu* 1961 II. LLJ. 436 it is observed that before the dispute can become a collective dispute it should not be merely sponsored by the union which has got a substantial number of the employees of the particular concern on its rolls but it is also necessary that a substantial number of employees of the concern should have supported the decision of the union to take up the case of individual worker. In another case *Deepak Industrial Ltd. Vs. State of West Bengal* 1975 I. LLJ. 293 Their Lordships observed where a dispute has been sponsored or espoused by the union authority to do so must be proved by material evidence, either a resolution or authorisation by indi-

vidual workmen or substantial number of such workmen, held necessary for a union to represent workmen. I have already stated above that the union had not lead any such type of evidence which is stated in the said authority. On the basis of these authorities and the evidence on the record it is tried to argue on behalf of the authority that the dispute cannot be called an Industrial dispute. Mr. Dongre, the Learned Advocate for the workmen and the Union placed reliance on *Maharashtra General Kamgar union and State of Maharashtra* 1996 (73) FLR 1306 which states :—

Section 2-A in terms was intended to get over the difficulty and hardship to workmen caused by the rigid stratification of law resulting from the consistent interpretation of section 2(k) of the Act defining the expression "industrial dispute" consistent with this intention, parliament provided a narrow exception to the discharge, dismissal, retrenchment or termination of service of an individual employer in connection with such discharge, dismissal, retrenchment or termination deemed to be an Industrial dispute, notwithstanding that no other workmen nor any union of workmen is a party to the said dispute. As a result of the legal fiction introduced by section 2-A, any dispute raised by or on behalf of an individual workmen amounts to an industrial dispute only if it pertains to his discharge, dismissal, retrenchment or otherwise removal from service, even if it is not espoused by other workmen employed in the industrial establishment, collectively or through a trade union".

Their Lordship had also considered the case of *Bombay Union of Journalists Vs. Hindu* and the other relevant facts of different authorities which I have discussed above and observed that after introduction of section 2-A in Industrial Disputes Act of 1947 any dispute raised by on or behalf of an individual workman and the employer with respect to dismissal, discharge, retrenchment or termination of service it would be an Industrial Dispute. The ratio given in this authority clearly applies to the present set of facts. I therefore find that the dispute raised is an Industrial Dispute which is referred to this Tribunal for adjudication. Hence the reference is tenable.

17. The authority had invoked the provisions of section 31(2)(VI) of the I.A.A.I. (general condition of service) regulations which are called service regulations and effected termination of her service. They never applied the International Airport Authority of India Employees (conduct, discipline and appeal) Regulations 1987. It is argued on behalf of the workman that the regulations were not approved by the Central Government and not published in the Official Gazette. Therefore the regulation had no effect in the eye of law. The work person was not given any notice that in view of the said regulations and for her not attending the duties or that absconding from the duty her services would be terminated.

18. In *International Airport Authority of India Vs. Veeru Muthu Sukhlingam and Anr.* 1993 CLR II pg. 521 that was a case wherein the workman overstayed the sanctioned leave for a period exceeding two months. The management terminated the services of the workman without notice under regulation 231(2)(VI). It is observed by Their Lordship that "The reliance placed upon Regulation 31(2)(vi) that it was not necessary to hold an enquiry before ordering termination is not justified. In view of section 38(2) the power to make regulations is subject to certain conditions. One of the conditions is that no regulation made by the Authority under the Act shall have effect until it has been approved by the Central Government and published in the Official Gazette. It is not in dispute that the Regulations in question have not received the approval of the Central Government and consequently there is no publication in the Official Gazette. Under these circumstances the regulations have no effect in eye of law".

19. Their Lordships in that authority further stated :—

"Apart from the consideration aforementioned even assuming that the regulation in question could not be relied upon for the purpose of justifying the submission that no domestic enquiry was necessary the language in which the regulation is couched and the consequences which ensure therefore make it abundantly clear that an opportunity has to be given to the workman to show cause before taking the extreme step of terminating his employment".

20. At the later portion of the Judgment Their Lordships have stated that even assuming without deciding that no domestic inquiry was necessary an opportunity was required to be given to the respondent to place before the competent authority all the facts and circumstances of the case to enable the question of contention of unauthorised absence being considered in accordance in with law. Relying in this authority it is tried to argue on behalf of the work person that she was not given a notice that in view of such regulations she will be treated as abandoning the service and her name will be removed from the roll. In other words she will be terminated. It is further submitted that as the regulations are not valid the action taken there under is not justified.

21. On behalf of the authority it is submitted that the writ petition No. 471 of 1993 was filed in the High Court of Judicature in Bombay wherein it challenged validity of the International Airports Authority of India general conditions of service regulations, 1980. Their Lordships passed an order dt. 29-4-1993 and held that it is well settled principle of law that for administrative reason pending of the Central Government the authority is entitled to frame administrative instructions. It can be seen that later on Their Lordships have observed that the head office had issued a circular wherein it is observed that for abandonment of duties the domestic inquiry should be held. So far as that order or

any other orders are concerned Their Lordships have observed that the order in that particular case is administrative in nature. The facts of that case are quite different from the facts before me. They relate to some arrangement, but the case of *Veeru-muthu* relates to the exact regulations viz 31(2)(vi). There is also a reference of giving an opportunity to the concerned workmen.

22. The Learned advocate for the authority placed reliance on *T. Cajee Vs. U. J. Siem & Anr.* AIR 1961 S.C. 276; *Nagrajan (BN) and Qrs. Vs. State of Mysore & Ors.* 1967 I. LLJ 698; *Mysore State Road Transport Corporation Vs. G.C. Char* 1968 II LLJ 144; *Dr. S.D. Choudhary Vs. State of Assam* 1976 II LL 151; *V. T. Khanzode Vs. Reserve Bank of India* AIR 1982 SC 917; *V. Balasubramanian Vs. Tamilnadu Hsg. Board & Ors.* 1988 II LLK p 435 and *Life Insurance Corp. of India Vs. J.A. D'Souza* 1996 I CLR 729. In all these authorities it is observed that the authorities, corporations can issue orders, circulars and can act upon the same till the rules or regulations are duly prepared. Here in this case the action is taken under the regulations. Those regulations are not certified by the Central Government not published in the official gazette. I therefore, find that these authorities had not application to the set of facts before me and the *Veeru-muthu's* case is applicable to the present set of facts.

23. It is tried to argue on behalf of the workman that the name of the workman was removed from the pay roll which amounts to retrenchment. Admittedly the management had not followed the procedure of retrenchment. It can be seen that the action which was taken by the management was under the regulations. Therefore, there was no question of following the orders. As an opportunity is to be given to the management to justify its action so also an opportunity is to be given to the work person to justify her claim. Under such circumstances it cannot be said that the action which is taken by the authority amounts to retrenchment.

24. The authority had examined *Goel* the Senior Personnel Manager who tried to justify the action which is taken by the authority. He lead evidence how the work person remained absent in the past. He also affirmed how different telegrams were sent to her and she was asked to join the duties. But admittedly there is no domestic inquiry against her. As stated above in such type of cases an opportunity has to be given to the work person. It is tried to submit on behalf of the authority that an opportunity was given but she did not avail of. No doubt the telegrams were sent to her to attend the duty. She intimated to the authority different reasons for not attending the duties. Now an opportunity has to be given her to justify those reasons. In other words the tribunal has to sit as an inquiry officer regarding the alleged charges against her.

25. The Learned advocate for the authority had placed reliance on different authorities. They relate to when the person is to be treated as an

abandoning the duty, punishment, adbandament does not amount to retrenchment and compensation etc. As an opportunity has to be given to the parties at this juncture I do not find it necessary to discuss those authorities. I may mention it here, in fact the management had lead evidence of Goel and Gheam in respect of their case. But as against that the workmen did not. It is tried to submit that she was given an opportunity to lead evidence in the matter. But she did not avail the same. An opportunity has to be given to her again because I have come to the conclusion that there was no domestic inquiry against her and it should have been held. For all these reasons I record my findings on the issues accordingly and pass the following order :

### ORDER

The parties are allowed to lead evidence to justify their actions.

S. B.PANSE, Presiding Officer

नई दिल्ली, 6 अगस्त 1997

का०आ० 2170.—औद्योगिक विवाद अधिनियम, 1947 (1947 का) का धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास पोर्ट ट्रस्ट के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-97 को प्राप्त हुआ था।

[सं० एल-33012/8/91-आई० आर (विधि)]

बो० एम० डेविड, डेस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2170.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Madras Port Trust and their workman, which was received by the Central Government on 6-8-1997.

[No. L-33012/8/91-IR (Misc)]  
B. M. DAVID, Desk Officer

### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Friday, the 21st day of March, 1997

#### PRESENT :

Thiru S. Thangaraj, B.Sc., L.L.B., Industrial Tribunal  
Industrial Dispute No. 5 of 1992

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947, between the Workmen and the Management of Madras Port Trust)

#### BETWEEN

Shri Saravanan  
No. 85, Cemetery Road,  
Model II Lane,  
Madras-600021.

#### AND

The Chairman  
Madras Port Trust  
Rajaji Salai,  
Madras-600001.

#### REFERENCE :

Order No. L-33012/8/91-I.R. (Misc), Ministry of Labour dated 21-1-92 Government of India, New Delhi.

This dispute coming on for final hearing on Monday, the 17th day of February 1997, upon perusing the claim, counter statement and all other material papers on record, and upon hearing the arguments of Tvl. R. Ganesan, R. Gowdhaman, Advocates appearing for Petitioner and of Tvl. A. L. Somayaji and R. Arumugam, Advocates appearing for the Management, and this dispute having stood over till this day for consideration, this Tribunal made the following :

#### AWARD

The Government of India, Ministry of Labour Department in their Order No. L-33012/8/91-I.R. (Misc), dated 21-1-92 have referred this dispute under Section 10(1)(d) of the Industrial Disputes Act 1947 to this Tribunal to adjudicate the following issue :

"Whether the action of management of Madras Port Trust in terminating the services of Shri Saravanan on the charge of theft is justified ? If not, to what relief the workman is entitled ?"

2. On service of notice the petitioner and respondent appeared before this Tribunal and filed their claim statement and counter statements respectively.

3. The main averments found in the claim statement files by the petitioner are as follows :

The petitioner was employed as mazdoor T. No. 1368 in the mazdoor conservancy civil division of the Madras Port Trust. He joined service in 1965. For the alleged theft of T. V. Tube the petitioner and another Mohan were under suspension w.e.f. 18-3-83. For the alleged occurrence a criminal case was filed against the petitioner for the theft of T.V. Tube in C.C. 2927/82 before the 16th Metropolitan Magistrate Court, George Town who found the petitioner not guilty and acquitted him. The management held two separate enquiries against the petitioner Mohan. The enquiry was held even though the criminal case was pending. The enquiry was not held in a fair and proper manner. The enquiry officer played the role of prosecutor and Judge. As there was no presenting officer he acted as presenting officer. The petitioner was not allowed to examine defence witness. The copy of the enquiry proceedings and the enquiry report were not furnished to the petitioner. The Enquiry Officer gave a finding in favour of Mohan saying that the charges have not been proved whereas the Enquiry Officer in the case of the petitioner held that the charges have been proved. The report of the Enquiry Officer is perverse. Basing on the findings of the Enquiry Officer the petitioner was discharged from service w.e.f. 23-3-85. The petitioner has preferred an appeal and there was no reply from the appellate authority. The enquiry was bad and violative of the principles of natural justice. The petitioner was examined and was also cross-examined. The Enquiry Officer had acted as prosecutor and Judge. The order of discharge passed against the petitioner is not maintainable. Award may be passed for reinstatement, continuity of service, back wages and other benefits.

4. The main averments found in the counter statement filed by the respondent/management are as follows :

On 18-3-83 at about 1.15 p.m. the petitioner and another Mohan removed a T.V. Tube No. 23073 from one container. The petitioner and Mohan were caught by the sub-inspector Sri Yadav and were produced before the A.S.M. in charge of the container yard for identification of the property. The petitioner and Mohan were handed over to M-1 police station along with the stolen property, and a case in Cr. No. 230/83 u/s. 380 IPC has been registered against them. Thiru Mohan was working as mazdoor of Traffic Department. The petitioner was working

in the civil engineering department and the disciplinary authority held two enquiries since these employees are different. The petitioner was given full opportunity in the enquiry. The petitioner participated in the enquiry, and the enquiry authority gave his finding. Thereafter second show cause notice was given to the petitioner and on obtaining his explanation the order of termination was passed against him. The allegation that the Enquiry Officer played the role of prosecutor and Judge is false. The petitioner never objected to the procedure adopted by the Enquiry Officer. The Enquiry Officer merely by way of clarification asked the petitioner at the first instance and he was examined and cross examined. The copy of the enquiry proceedings and copy of enquiry report were furnished to the petitioner. The enquiry was conducted in a fair and proper manner. The order of discharge passed against the petitioner is reasonable. The findings of the Enquiry Officer is not perverse and all opportunities were given to the petitioner. The claim petition may be dismissed.

5. One witness was examined on the side of the petitioner and Exs. W-1 to W-7 have been marked. Two witnesses were examined on the side of the respondent and Exs. M-1 to M-20 have been marked.

The point for our consideration is :

Whether the action of management of Madras Port Trust in terminating the services of Shri Sarvanan on the charge of theft is justified? If not, to what relief the workman is entitled?

6. The petitioner joined the services of the respondent Madras Port Trust in the year 1965 as mazdoor. On 18-3-83 at about 1.15 p.m. the petitioner was found removing on T.V. Tube No. 23073 from the container. Sri Yadav sub-Inspector who saw the petitioner removing the T.V. Tube blew his whistle and thereafter the S.I. and his party caught hold of the petitioner and another Mohan. The S.I. gave his statement. The petitioner was produced before the ASM Ramachandran. Regarding the said occurrence the management has issued charge Ex. M-1 to the petitioner and the domestic enquiry was held against the petitioner and one Janakiraman a co-worker was appointed as defence representative as requested by the petitioner. The petitioner participated in the domestic enquiry and the Enquiry Officer explained the charges to the petitioner and thereafter he clarified certain things from the petitioner. After answering the queries the petitioner has clearly denied the charges. It was argued on the side of the petitioner that the Enquiry Officer at the first instance examined the petitioner and cross-examined him. A perusal of the enquiry proceedings marked as Ex. M-14 shows that the Enquiry Officer had put some questions to the petitioner, regarding the charge, and after the clarification by the Enquiry Officer the petitioner once again denied the charges. What had happened on that day was the explanation of the charges and it cannot be taken as a cross-examination. The allegation on the side of the petitioner that he was cross-examined by the Enquiry Officer at the first instance cannot be accepted.

7. The enquiry proceedings marked as Ex. M-14 shows that the petitioner had all opportunities in the domestic enquiry to defend his case. The first witness examined on the side of the management was Thiru Ramachandran A.S.M. The defence representative has cross-examined the said witness. The second witness Mr. Yadav who saw the occurrence and arrested the petitioner red handed, was also cross-examined by the defence representative. The next witness Thiru K. P. Singh a Constable also deposed about the occurrence. He was also cross-examined by the defence representative. The accused in the criminal case by name Mohan examined as a defence witness on the side of the petitioner. Therefore the petitioner had all opportunities as put forward his case in the domestic enquiry. A perusal of the domestic enquiry proceedings marked as Ex. M-14 would go to show that it was fair and proper. The allegation raised by the petitioner against the domestic enquiry cannot be accepted.

8. It was alleged on the side of the petitioner that the Enquiry Officer has acted as prosecutor and Judge, as no presenting officer was posted on the side of the management. The Bombay High Court in *Pravin Raulal Dudhara Vs. Municipal Corporation of Greater Bombay* 1996 II LLN 1119 held that there is no need to appoint the management representative and the Enquiry Officer can elicit the facts from the management witness and the same will not amount to cross-examination. It is desirable to have separate presenting officer and the failure to have a separate presenting officer will not go against the case of the management. The Enquiry Officer had put questions to the witness to elicit facts and thereafter it had not gone unchallenged and the petitioner had every chance to cross-examine the witness on his deposition. A perusal of the records in the instant case shows that the defence representative had elaborately cross-examined the witness and there was no denial of opportunity to the petitioner. When the Enquiry Officer elicited facts by way of putting questions to the witness concerned, the petitioner as well as his defence representative were present and they never objected to the procedure adopted by the Enquiry Officer. What the Enquiry Officer has done will not in any way prejudice the interest of the workman and the workman has not raised any objection at the appropriate stage and even thereafter the opportunity of cross examination was given to the petitioner. The workman submitted a ruling of our Supreme Court in *Meenglas Tea Estate Vs. The Workman* AIR 1963 S.C. 1719. In the said case it was held that in the enquiry into charges against certain workmen for having assaulted the Assistant Manager only certain questions were put to each workman in turn and the management has not examined any witness in support of the charge nor any witness tendered evidence. There was no opportunity to the persons charged to cross examine the witnesses. As the persons assaulted were in the position of Judge and prosecutor and witnesses and in such circumstances it was held that there was traversity of principles of natural justice in the said enquiry and the enquiry was totally vitiated. No such procedure was adopted in the present case and the workman had every opportunity in the domestic enquiry. As already stated at the time of explaining the charges to the workman the Enquiry Officer made certain clarifications and the workman had answered them and thereafter he denied the charges. The Enquiry Officer was examined as MW-1 before this Tribunal and there was no serious cross examination on the ground of not following the principles of natural justice by Enquiry Officer. Therefore the above ruling is not applicable to the present case. It is clear in the instant case that the enquiry proceedings were fair and proper.

9. The workman had raised objection that the findings of the enquiry officer is not proper. However the Sub-Inspector Thiru Yadav who witnessed the occurrence, while the workman removing T.V. Tube and caught hold of the workman red handed and the ASM Ramachandran to whom the workman was handed over alongwith properties were all examined on the side of the management and their evidence is very cogent and convincing and there is no valid reason either to discredit or disbelieve their version. Therefore the finding of the enquiry officer cannot be said to be perverse. On the contrary the finding is supported by evidence on record. The enquiry officer has also clearly stated in his evidence before this Tribunal about his enquiry. In such circumstances the findings of the enquiry officer cannot be said to be perverse.

10. It was argued on the side of the workman that along with the second show cause notice the copy of the findings was not furnished to the petitioner to submit his explanation. The second show cause notice is marked as Ex. M-17. In the said notice it has been clearly stated that a copy of the enquiry report has been sent alongwith the notice. MW-2 the office superintendent has clearly stated that he has sent the second show cause notice enclosing a copy of



the findings and that the petitioner has received the same under Ex. M.20 acknowledgement. On receipt of the same the petitioner had sent two letters Exs. M.21 and 22 stating that he wanted further time to give his reply to the second show cause notice. In Exs. M.21 and 22 he has not stated specifically that the findings was not sent to him along with the second show cause notice. On the contrary he has written to the respondent that he required further time to submit his explanation. Therefore the objection raised by the petitioner that the copy of the enquiry finding was not sent to him along with the second show cause notice is an after thought and the same cannot be accepted. It was alleged on the side of the petitioner that when one criminal case was filed against him and Mohan, the management held two separate enquiries against them is not in accordance with law. It was further alleged that the enquiry officer who heard the case of Mohan has given his finding stating that the charge was not proved against him, but whereas the other enquiry officer had given his finding stating that the charges against the petitioner have been proved. The respondent in his counter has clearly stated that the petitioner was employed in civil engineering department whereas Mohan was employed as mazdoor in traffic department and so the disciplinary authority held two separate enquiries. The disciplinary authority who is having jurisdiction alone can held enquiry and not other authority. So when Mohan and the petitioner were employed in two different departments having two different disciplinary authorities there cannot be a single enquiry against both of them. Therefore the objection raised by the petitioner cannot be accepted. The findings given by the other enquiry officer in the case of Mohan cannot be taken as a defence by the petitioner herein. When the petitioner committed theft of the TV tube and at that time Mohan was found nearby. Actually the person who committed theft was the petitioner and not Mohan. So the fact differed and the petitioner cannot expect that similar finding should be given on dissimilar facts. The officials of the respondent have produced the petitioner along with the property in M.1 Harbour Police station and case in Cr. No. 230/83 u/s. 290 IPC was filed against them. The 16th M.M. Madras who tried the case acquitted them. The copy of the judgement passed by the learned Magistrate is marked as Ex. W.1. It was argued on the side of the petitioner that when the criminal court has acquitted the petitioner and thereafter taking departmental action is not in accordance with law. To substantiate the said reason the petitioner submitted a ruling in QAMARALI Vs. STATE AIR 1959 MADHYA PRADESH 46 wherein it was held:

“Where an order of dismissal was based on the report of such departmental enquiry, the very basis of the order of dismissal was unwarranted, and illegal. Such an order based on unwarranted and unauthorised assumptions could not be said to be an order passed within power or within jurisdiction of the authority.”

However our High Court in MM Rubber Co. Ltd., vs. S. Natarajan and Presiding Officer, reported in 1985 II LLJ 364 after considering many of the earlier rulings held that the order passed by the criminal

court will not prevent the employer from taking departmental action against the employee as the criminal trial and the departmental disciplinary proceedings are two different functions. As held by our High Court, the judgement of the criminal court will not deter the employer to take disciplinary proceedings against the employee. As there is valid reasons to say that the charge framed against the workman has been proved and the domestic enquiry was found to be fair and proper the only question remains to be answered is that of the punishment imposed on the workman. The management has drawn my attention to the ruling of our High Court in SEERALAN vs. PRESIDING OFFICER II ADDL. LABOUR COURT reported in 1986 II LLJ 85 at page 86 it has been held as follows:

“Regarding charge of theft, both the disciplinary authority and the Tribunal, on a meticulous analysis of evidence on record, have held that the charge had been proved. Once such a finding is rendered which is an offence published under Indian Penal Code, it would be against interest of other workmen and industrial development if adequate punishments are not imposed when offences under Indian Penal Code are established. He could have been prosecuted. Company having chosen to proceed by a domestic enquiry based on the standing order this Court considers that there is very little scope for any generosity to be shown or to bring into existence minor punishment for such derelictions. Committing theft had been considered as a Penal offence in the interest of society to maintain law and order in the country and to strike out standards, when they occur in industries, would be detrimental to the interest of the nation, if a different approach is made mainly because he is a workman under I. D. Act”.

The charge against the workman is for theft and there is ample materials on record to prove such charge. In the circumstances there is no valid ground to interfere with the punishment imposed on the workman.

For the foregoing reasons the order of termination passed against the workman Thiru Saravanan on the charge of theft is justified and he is not entitled to any relief.

In the result, the I. D. is dismissed. No costs.  
Dated this the 21st day of March, 1997.

S. THANGARAJ, Industrial Tribunal.

#### WITNESSES EXAMINED

For Workman :

W.W. 1 : Thiru R. Saravanan.

For Management :

M.W. 1 : Thiru M. Duraisamy.

M.W. 2 : Thiru A. Thirunavukarasu.

## DOCUMENTS MARKED

## For Workman :

- Ex. W.1/16-5-88 : Judgement in CCNo. 2927/83 (xerox copy).  
 Ex. W.2/2-1-88 : Chief Engineer's memo (xerox copy).  
 Ex. W.3/30-7-88 : Appeal to Chairman, Port Trust (xerox copy).  
 Ex. W.4/31-10-89 : Secretary's order (xerox copy).  
 Ex. W.5/10-5-89 : I. D. raised before Regional labour Commissioner.  
 Ex. W.6/10-5-89 : Reply filed by Port Trust.  
 Ex. W.7/13-4-91 : Conciliation failure report.

## For Management :

- Ex. M.1/11-4-83 : Charge memo.  
 Ex. M.2/5-5-83 : Defence representative's letter xerox copy).  
 Ex. M.3/11-4-84 : Petitioner's letter ,xerox copy).  
 Ex. M.4/26-3-85 : Discharge order (xerox copy).  
 Ex. M.5/18-3-83 : Report given by Thiru Yadav (Xerox copy).  
 Ex. M.6/18-3-83 : Report given by A.S.M. (xerox copy).  
 Ex. M.7/18-3-83 : Petitioner's Statement (xerox Copy).  
 Ex. M.8/25-3-83 : Report given by commandant.  
 Ex. M.9/18-4-83 : Previous punishment details.  
 Ex. M.10/26-4-83 : Petitioner's letter.  
 Ex. M.11/5-5-83 : Petitioner's letter.  
 Ex. M.12/5-5-83 : Petitioner's defence representative's letter.  
 Ex. M.13/19-5-83 : Respondent's letter.  
 Ex. M.14/15-6-83 : Enquiry Proceedings.  
 Ex. M.15/20-2-84 : Petitioner's letter.  
 Ex. M.16/25-4-84 : Enquiry report.  
 Ex. M.17/25-4-84 : Second show cause notice.  
 Ex. M.18/16-4-84 : Respondent's letter.  
 Ex. M.19/19-7-84 : Details about the petitioner.  
 Ex. M.20/19-7-84 : Acknowledgement.  
 Ex. M.21/25-4-84 : Petitioner's letter.  
 Ex. M.22/26-5-84 : Petitioner's letter.

नई दिल्ली, दिनांक 11 अगस्त, 1997

का०आ० 2171—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में एम० जी० एम० (इंडिया) प्रा० लि०, मुम्बई, के प्रबन्धक-

तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निश्चित औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-8-97 को प्राप्त हुआ था।

[सं० एल-34011/14/96-आई० आर० (विविध)]  
 बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 11th August, 1997

S.O. 2171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Visakhapatnam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. S.G.S. (India) Pvt. Ltd., Bombay and their workman, which was received by the Central Government on 11-8-97.

[No. L-34011/14/96-IR(Misc.)]

B. M. DAVID, Desk Officer  
 ANNEXURE

IN THE COURT OF INDUSTRIAL  
 TRIBUNAL-CUM-LABOUR COURT,  
 VISAKHAPATNAM

## PRESENT :

Smt. G. Jaishree, B.Sc., LL.M., Chairman  
 & Presiding Officer  
 Wednesday, the 9th day of July, 1997  
 I.T.I.D. No. 8/97

## BETWEEN

The General Secretary,  
 Visakhapatnam Harbour & Port,  
 Workers Union, D. No. 26-26-27,  
 Harbour Approach Road,  
 Visakhapatnam-1.

—Workman

## AND

The Managing Director,  
 M/s. S.G.S. (India) Pvt. Ltd.,  
 Regd. & Head Office, S.G.S. House,  
 Naoraji Road, Colaba,  
 Bombay-400 001.

—Management

This dispute coming on for hearing before me but in the meanwhile on perusing the memo filed by both sides the Court passed the following :

## AWARD

Both absent. In view of Section 18(1) agreement between the parties, 'Nil Award is passed' and reference is closed.

Gives under my hand and seal of the Court this the 9th day of July, 1997.

Smt. G. JAISHREE, Chairman &  
 Presiding Officer

नई दिल्ली, 7 अगस्त, 1997

का० आ० 2172.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आन्ध्रा बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण भुवनेश्वर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार की 06-08-97 को प्राप्त हुआ था।

[सं० एल-12012/27/93-आई० आर० (बी-II)]  
सनातन, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2172.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Andhra Bank and their workmen, which was received by the Central Government on 6-8-97.

[No. L-12012/27/93-IR(B-II)]  
SANATAN, Desk Officer

## ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA,  
BHUBANESWAR

## PRESENT :

Sri M. R. Behera, O.S.J.S. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Orissa, Bhubaneswar

Industrial Dispute Case No. 27 of 1993  
(Central)

Dated, Bhubaneswar, the 24th. July, 1997

## BETWEEN

The Management of M/s. Andhra Bank,

5, Satyanagar, Bhubaneswar-751001.

—First Party-Management

## AND

Their Workman Sri Hemanta Kumar Nayak.  
S/o Muralidhar Nayak,  
Vill. Erada, P.O. Galadhari,  
Via., Devidol, Distt. Cuttack.

Second Party-Workman

## APPEARANCES :

Sri U. Leela Krishna, Personnel Officer—For  
the First Party-Management

Sri H. K. Nayak—The Second Party Workman himself.

## AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide their Order No. L-12012/27/93-IR(B-II), dated 16-8-93.

“Whether the claim of Sri Hemanta Kumar Nayak that the management of Andhra Bank was not justified in terminating his services and that he should be appointed in the services of the Bank on regular basis is justified? What relief, if any, is Sri Hemanta Kumar Nayak entitled to?”

2. While the case was posted for hearing on 24-7-97, both the parties filed a joint terms of settlement and impressed this Tribunal that the dispute has been settled amicably.

3. As an abundant caution, the terms of the settlement arrived between the parties were read over. The workman consented that for has entered into the settlement being aware of the terms of the settlement. The settlement seems to be fair and is accepted today.

4. The award is passed in terms of the settlement arrived between the parties. The terms of the settlement are reproduced below, which do form part of the Award.

## TERMS OF SETTLEMENT

- (1) The first party-management agrees to empanel the name of the 2nd party-workman in the list of temporary employees for casual engagement in the bank prepared in terms of bank level settlement dated 9-1-95 between the Management and the recognised and majority union of workmen.
- (2) The 2nd party-workman relinquishes and agrees to withdraw all his claims before the Hon'ble Tribunal under I.D. Case No. 27/93(C) and agree for abide by the settlement dated 9-1-95.
- (3) The 1st party agrees to extend all the benefits to workmen made available under settlement dated 9-1-95. The 2nd party workman shall only be entitled under the terms of the settlement

dated 9-1-95 and a copy of settlement is enclosed as Annexure-A to this settlement.

Dictated and corrected by me.

M. R. BEHERA, Presiding Officer

नई दिल्ली, 7 अगस्त, 1997

का० आ० 2173—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-08-97 को प्राप्त हुआ था।

[सं० एन-12012/102/94-आर्० आर्० (बी-II)]  
सनातन, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2173.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workmen, which was received by the Central Government on 26th August, 1997.

[No. L-12012/102/94-IR(B-II)]  
SANATAN, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

#### PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated : 9th day of July, 1997

Industrial Dispute No. 77 of 1994

#### BETWEEN

Sri V. Rambabu, Assistant Secretary,  
Syndicate Bank Staff Association,  
C/o Syndicate Bank, Kanuru,

Vijayawada, A.P. ... Petitioner.

#### AND

The Deputy General Manager,  
Syndicate Bank, Zonal Office,  
Hyderabad Pioneer House, Somajiguda,  
Hyderabad-500082. ... Respondent.

#### APPEARANCES :

Sri P. B. Vijaya Kumar, Advocate—for Petitioner.

M/s. K. Srinivasan Murty and G. Sudha,  
Advocates—for the Respondent.

#### AWARD

The Government of India, Ministry of Labour, New Delhi referred the following Industrial Dispute under Section 10(1)(d) and 2A of Industrial Disputes Act, 1947 by its Order No. L-12012/102/94-IR (B-II) dated 28th September, 1994, for adjudication :

“Whether the action of the management of Syndicate Bank, Hyderabad in imposing the punishment of ‘warning’ on Shri V. Rambabu, Spl. Asst. vide their Order dated 15th November, 1993 is justified? If not, what relief is the said workman entitled to?”

Both the parties appeared and filed their pleadings.

2. Sri V. Rambabu, concerned workman hereinafter to be called as the ‘Petitioner’, filed a claim statement contending as follows :

He is the Assistant Secretary of Syndicate Bank Staff Association. The Union submitted a strike notice on 12th December, 1990 with regard to change of the interest chargeable on loans to workmen. So the petitioner was served with a memo dated 13th December, 1990 for exceeding Overdraft facilities in April and May, 1988 to M/s. Sri Venkateswara Raw/Par Boiled Rice Flour Dal and Groundnut Oil Mills. The petitioner asked for the documents but they were not supplied. The petitioner gave explanation to the said Memo. The Union demanded the payment of Bonus in April, 1992 and the Management served the charge sheet dated 6th April, 1992 upon the petitioner. The petitioner submitted a reply to it on 10th April, 1992. An enquiry was held. The petitioner was found guilty and he was warned. The petitioner was not supplied with the documents sought by him. The enquiry was not valid. The extension of overdraft facility is given by the Branch Manager. It is in routine course the overdraft limit is extended to accommodate the party under the oral orders of Asst. General Manager. Hence the punishment is liable to be set aside.

3. The Respondent filed a counter contending as follows : The petitioner is an office bearer of Syndicate Bank Staff Association, which is a minority union and hence he does not enjoy the repre-

representative character of the workman/employees of the Respondent Bank. The petitioner was only awarded with minor punishment of 'warning' for his passing cheques for amounts beyond his powers. The punishment of 'warning' is the lowest punishment that can be awarded to a workman as per the Rules of the Bank by which the petitioner is governed. The petitioner was supplied with all the documents in which the respondent relied upon which were duly acknowledged by the petitioner. Hence the reference may be rejected.

4. This Tribunal heard both the parties and held by an order dated 27th January, 1997 that the domestic enquiry was conducted validly and properly. Then both the parties are heard on merits. The documents filed by the petitioner are marked as Ex. W1 to W5 and the documents filed by the Respondent are marked as Exs. M1 to M45.

5. The point for consideration is to whether the punishment given to the petitioner is liable to be set aside.

6. Point.—The petitioner was a clerk in Labbipat Branch in Vijayawada. He acted as Special Assistant at that time. He has powers to pass cash cheques upto Rs. 10,000 and clearing/transfer cheques upto Rs. 25,000 only independently. He was served with Ex. M2 Charge Sheet dated 6th April, 1992 alleging that though the Branch Manager permitted the Overdrawal of Rs. 3 lakhs on 18th April, 1988 for the Rice Mill, the petitioner passed a cheque for Rs. 3,60,000 on 18th April, 1988 without obtaining counter-signature of any Officer of the Branch on debit slip/cheque. Again the petitioner allowed drawal of Rs. 3,25,000 without any authorisation from Branch Manager and that the earlier overdrawal was not reimbursed. The petitioner pleads that he obtained the permission from the Branch Manager. It appears that the Branch Manager kept the record in his custody and the respondent has not filed the same into this Court.

7. The Zonal Office sought for clarification of the Branch Manager for extending the limits of overdrawals by Ex. W4 letter dated 14th August, 1989. The Branch Manager in his Ex. W5 reply dated 2nd September, 1989 did not say that the petitioner is responsible about the same. The pleads that the customers having Overdraft facility are allowed to exceed the overdraft limit every time as they sought the permission of Asst. General Manager and the bills used to be booked from far off places are received late by the Bank, whereas the customers receive the same immediately. The Vigilance Officer MW1 who was cross examined by the petitioner admitted that the overdrawals in the accounts were allowed in a routine manner and the overdrawals allowed in the account were

known to the Manager. So overdrafts are allowed on many occasions as per the evidence of M.W.1 in the enquiry and by Ex. W5 letter. The Branch Manager allowed the overdrawals in the routine course and thereafter he sought for permission from the Asst. General Manager. In the said circumstances all the clerks who worked as Special Assistants have to be punished and there is no special reason to punish the petitioner alone. There is a discrimination. Hence the punishment is liable to be set aside.

8. In the result, an Award is passed setting aside the punishment of 'warning' given to the petitioner.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal this the 9th day of July, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of Evidence

Witnesses examined on either side

NIL

Documents marked for the Petitioner  
(by consent)

- Ex. W1—Explanation dated 12th January, 1991 submitted by the petitioner to the Asst. G.M. (Vig.) Manipal.
- Ex. W2—Letter dated 23rd July, 1992 addressed by the petitioner to the Enquiry Officer.
- Ex. W3—Letter dated 4th August, 1992 of the Enquiry Officer to the petitioner.
- Ex. W4—Ex. D8 dated 14th August, 1989 marked in the enquiry regarding overdraft allowed in M/s. Rajyalakshmi Modern Rice Mill, Contractor.
- Ex. W5—Ex. D7 marked in the enquiry regarding the letter of the Manager addressed to the A.G.M., Zonal Officer.

Documents marked for the Respondent  
(by consent)

- Ex. M1—Letter dated 13th December, 1990 from the Vigilance Cell issued to Sri V. Rambabu.
- Ex. M2—Charge Sheet dated 6th April, 1992 issued to V. Rambabu.
- Ex. M3—Letter dated 10th April, 1992 from the Petitioner to the AGM, Zonal Office.
- Ex. M4—Appointment of Enquiry Officer, dated 27th April, 1992.

- Ex. M5.—Letter dated 6th July, 1992 from the Disciplinary Authority to Sri V. Rambabu.
- Ex. M6.—Letter dated 23rd September, 1992 from the AGM to Sri V. Rambabu.
- Ex. M7.—Letter dated 13th November, 1992 to the Enquiry Officer, appointing the defence.
- Ex. M8.—Letter dated 13th November, 1992 of the Management's representative regarding the furnishing of the list of documents.
- Ex. M9.—Enquiry Proceedings (Minutes of Enquiry).
- Ex. M10.—Deposition of MWI in the Enquiry.
- Ex. M11.—Written submission of Sri V. Rambabu dated 2nd March, 1992.
- Ex. M12.—Letter dated 28th June, 1993 to V. Rambabu from the AGM(O).
- Ex. M13.—Letter dated 14th June, 1993 of the E.O. to the AGM(O) Zonal Office.
- Ex. M14.—Report of the Enquiry Officer.
- Ex. M15.—Letter dated 12th July, 1993 addressed to the AGM(O) Zonal Office, Industrial Relations Sections, filed by the Petitioner.
- Ex. M16.—Show cause notice dated 14th \* October, 1993 issued to the Petitioner by the AGM.
- Ex. M17.—Minutes of hearing held at Zonal Office.
- Ex. M18.—Letter dated 15th November, 1993 enclosing to the proceedings.
- Ex. M19.—Proceedings of the AGM.
- Ex. M20.—Representation dated 14th December, 1993 made by V. Rambabu to the App. Authority.
- Ex. M21.—Complaint dated 21st December, 1993 made to the ALC, Vijayawada.
- Ex. M22.—Reply dated 28th January, 1994 by the Dy. G.M. to the ALC, Vijayawada.
- Ex. M23.—Acknowledgement dated 22nd February, 1994 for the documents served.
- Ex. M24.—Progs. of the GM(P) Syndicate Bank, Hd. Office, Manipal.
- Ex. M25.—Lr. dated 28th March, 1994 addressed to the ALC(C) Vijayawada by the Dy. G.M.
- Ex. M26.—Minutes of Conciliation.
- Ex. M27.—Conciliation failure report dated 20th April, 1994.
- Ex. M28.—Xerox copy of Pt. I (XX) Sch. III to V Bipartite Sett. dated 17th September, 1984.
- Ex. M29.—Xerox copy of Chapter XXXI of Syndicate Bank.
- Ex. M30.—Xerox copy of duties and responsibilities of Spl. Asst.
- Ex. M31.—Lr. dated 8th January, 1985 of sanction to M/s. Sree Venkateswara as per Boiled Rice Mill.
- Ex. M32.—Lr. dated 18th April, 1988 of the Management of Sree Venkateswara as per Boiled Rice Mill.
- Ex. M33.—Debit slip dated 18th April, 1988 for Rs. 3,60,000.
- Ex. M34.—Cheque dated 10th May, 1988 for Rs. 3,25,000.
- Ex. M35.—Extract xerox copy of the ledger of M/s. Venkateswara Rice Mill.
- Ex. M36.—Xerox copy of the Lr. of the Manager addressed to the Divl. Manager on D.D. allowed O.D. A/c. of M/s. Venkateswara Rice Mill.
- Ex. M37.—Xerox copy of SB A/c. and outstanding for the period of 15 days.
- Ex. M38.—Xerox copy of details of overdrafts allowed in overdraft|current|SB Account and outstanding for a period of 15 days.
- Ex. M39.—Regulation of ODA Account of M/s. Rajyalakshmi Modern Rice Flour and Oil Mill and another addressed to the AGM Zonal Office, Vijayawada.
- Ex. M40.—Lr. addressed by the Manager to the District Manager, Divl. Office, BZA.
- Ex. M41.—Lr. addressed by the Manager to the AGM Zonal Office, Vijayawada.
- Ex. M42.—Lr. dated 14th August, 1989 from the AGM to the Manager, Vijayawada.
- Ex. M43.—Lr. dated 9th January, 1991 addressed by V. Rambabu to the Manager, Syndicate Bank, Vijayawada.
- Ex. M44.—Lr. of the Manager to Sri V. Rambabu.
- Ex. M45.—Collection of Original documents and issuing of ack. Receipts.

Sd/-

Industrial Tribunal-I, Hyderabad

नई दिल्ली, 7 अगस्त, 1997

काआ 2174—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबन्धकत्व के संबंध में निम्नलिखित और उनके कार्य-कारो के बीच अनुबंध से निरदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण मद्रास को पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-08-97 को प्राप्त हुआ था।

[सं. एन-12012/196/92 आर्द. आर. (बी-II)]

सनातन, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2174.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workmen which was received by the Central Government on 6-8-97.

[No. L-12012/196/92-J.R. (B-II)]

SANATAN, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Thursday, the 24th day of April, 1997

#### PRESENT :

Thiru S. Thaagaraj, B.Sc., L.L.B., Industrial Tribunal

Industrial Dispute No. 105/1992

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Indian Bank, Madras-1).

#### BETWEEN :

Smt. S. Maheswari,  
C/o. Sh. A. V. Shanmugam,  
Shanker Enterprises,  
8th Cross Road, Meedalapalaya Nagar,  
have Road,  
Bangalore-.

#### AND

The Asst. General Manager,  
Indian Bank, 31, Rajaji Salai,  
Madras-600 001.

#### REFERENCE :

Order No. L-12012/196/92-IR(B-II), Ministry of Labour, dated 4-12-92, Govt. of India, New Delhi.

This dispute coming on for final hearing on Monday, the 31st day of March 1997, upon perusing the claim, counter statement and all other material papers on record, upon hearing the arguments of

Tvl. K. Chandru and D. Bharathy, Advocates appearing for the Petitioner and of Tvl. Aiyar & Dolia, R. Arumugam, B. Harihab, Advocates appearing for the respondent management, and this dispute having stood over till this day for consideration, this Tribunal made the following.

#### AWARD

This reference has been made for adjudication of the following issue :—

“Whether the action of the management of Indian Bank is justified in deeming Smt. Maheswari to have voluntarily retired from the Banks service w.e.f. 17-4-90 ? If not, to what relief is the workman entitled ?”

Government of India, vide their Order No. L-12012/196/92-IR(B-II), Ministry of Labour, dated 4-12-92, have referred this dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947 to this Tribunal for adjudication of the following issue :

“Whether the action of the management of Indian Bank is justified in deeming Smt. Maheswari to have voluntarily retired from Bank's service w.e.f. 17-4-90 ? If not, to what relief the workman is entitled to ?”

On service of notice, both the petitioner and the respondent appeared before this Tribunal and filed their claim and counter statements respectively.

3. The main averments found in the claim statement filed by the petitioner are as follows :—

The petitioner was employed as clerk-cum-Shroff-typist in the Kumarapalyam branch of the respondent bank and on transfer to Zonal office, Coimbatore. She joined duty on 8-12-89 after availing the joining time. The petitioner fell sick and the respondent-management issued a memo to the petitioner dated 2-1-90. On 3-1-90 the petitioner gave a reply requesting leave for the said period and promised to send Medical certificate as soon as she received from the doctor. In the mean time, the petitioner shifted her residence to Bangalore and she had sent a letter dated 7-2-90 disclosing the said fact and also by furnishing her Bangalore address for further communications. On 24-1-91, she had sent a letter to the Zonal Office, Coimbatore requesting her transfer to anyone of the branches at Bangalore City. By the letter dated 4-2-91, the respondent Bank has stated that her services were terminated and enclosed the copies of letters dated 19-3-90 and 2-5-90 which were purposely sent to her earlier address at Coimbatore. Her services were terminated under Clause 17 of the V Bipartite Settlement relating to voluntary cessation of employment. The respondent bank without taking note of the change of address had issued communications to her previous address. The action of the management is motivated and they had not followed the rules of procedure and principles of natural justice incorporated under the Bipartite Settlement. The action of the management in

dispensing with the service of the petitioner w.e.f. 17-4-90 is wholly illegal unjust and are liable to be set aside. The termination of the services of the petitioner would amount to retrenchment within the meaning of Section 2(oo) of the I.D. Act, and the respondent has also failed to comply with the mandatory provision of Section 25F of the I.D. Act, 1947. Therefore, the order passed by the respondent-management is void ab-initio. When the petitioner had informed her address at Bangalore, it was not fair on the part of the respondent-bank to send letters to her old address. The petitioner could not attend work due to her illness and she had not an iota of intention to stay away from work. One Mr. Gunasekaran, voluntarily stayed away from work, was reinstated and the same principle can be applied to the case of the petitioner also. Award may be passed for reinstatement, continuity of service and backwages.

4. The main averments found in the counter filed by the respondent-bank are as follows :

The petitioner had voluntarily left the services of the respondent-bank, in accordance with Clause 17(a) of the V Bipartite Settlement dated 10-4-89 and by no stretch of imagination her voluntary cessation to be the employee of the respondent-bank would fall under Sec. 2(oo) of the I.D. Act, 1947. But it is one failing under the excluded category provided for under the said section. To such voluntary cessation of employment the provisions of Sec. 25F of the I.D. Act, are not attracted. The petitioner having not reported for duty at Coimbatore on 15-12-89 by the communication dated 30-12-89, she was called upon to report for duty and the said letter was sent to the address given by her. She had acknowledged the receipt of the letter. She was relieved from Kumarapalayam branch on 7-12-89 and the petitioner stayed away from work on 9-12-89 after informing orally to the Chief Officer, Zonal Office, that she was going to avail joining time. No memo dated 2-1-1990 was issued for her absence. The petitioner did not report for duty even after availing the joining time on 15-12-1989. After waiting for few days, on 30-12-1989, the respondent bank sent a communication to the address given by her asking her to report for duty. She had acknowledged the receipt of the letter on 6-1-1990. The petitioner had sent a letter dated nil received by the bank on 3-1-1990 stating that she was suffering from pain in vertebral bone and requesting for leave without specifying the duration. The respondent informed her vide letter dated 3-1-1990 to apply for leave in the prescribed format with medical certificate. This letter was sent to the petitioner to the address in Coimbatore given by her in the undated letter received by the respondent on 3-1-1990. The respondent has not received any letter dated 7-2-1990 alleging that to have been sent by the petitioner. The allegation that she had sent a letter dated 7-2-1990 is false and untrue. After receipt of the undated letter on 3-1-1990, the respondent received the letter dated 26-12-1990 from the petitioner wherein she had furnished her address at Bangalore but without enclosing her medical certificate evidencing her ill-

ness. In her letter dated 24-1-1991, she had stated that as per doctor's advice she must stay at Bangalore or at any place near Bangalore. Long prior to the that the respondent had sent a letter dated 19-3-1990 and called upon the petitioner to report for duty within 30 days from the date of receipt of the said letter, and the same was sent to her last known address. As she did not report for duty even by May 1990, she was deemed to have voluntarily retired from service of the respondent bank in terms of Clause 17(a) of the V Bipartite Settlement. Neither in her letter dated 26-12-1990 nor the letter dated 24-1-1991, the petitioner has made a reference to her letter dated 7-2-1990. If really she had sent a letter dated 7-2-1990 she would have definitely made the reference of the previous letter. Nothing prevented the petitioner from sending the medical certificate and also by giving her address at Bangalore. The action of the respondent discloses that she was not interested to continue her services with the bank but belatedly had chosen to distort the facts to suit her case. The petitioner worked in the bank on 8-12-1989 and thereafter she ceased attending office. As an award staff she was entitled for joining time of six calendar days only. As per rules, she must have reported for duty on 15-12-1989, but she failed to do so. As she deemed to have voluntarily retired from service of the bank accordance with clause 17(a) of V. Bipartite Settlement, Sec. 2(oo) of and Sec. 25F of the I.D. Act, are not applicable. She had chosen to remain absent from 9-12-1989 till 26-12-1990, when she informed the bank that she was under treatment and seeking transfer to Bangalore, is too tall for relief. The action of the respondent-bank is justifiable and there is no valid reason to interfere with the order of termination passed by the respondent-bank. The case of Mr. Gunasekaran is entirely different from that of the petitioner is not identical. For the aforesaid reasons the I.D. may be dismissed.

5. One witness was examined on the side of the petitioner and Exs. W-1 to W-16 have been marked. One witness was examined on the side of the respondent-bank and Exs. M-1 to M-22 have been marked.

6. The only point for our consideration is : Whether the action of the management of Indian Bank is justified in deeming Smt. Maheswari to have voluntarily retired from the Banks service w.e.f. 17-4-1990 ? If not, to what relief is the workman entitled ?

7. The Point : The petitioner Smt. Maheswari was working in the Kumarapalayam branch of the respondent Indian Bank and was transferred to zonal office of the Indian Bank at Coimbatore on 7-12-1989. The letter written by the Kumarapalayam branch to the Zonal office, Coimbatore too that effect is marked as Ex. M.1. She had joined duty in the zonal office, Coimbatore on 8-12-1989 and the letter written by the zonal office to the Kumarapalayam branch to that effect is marked as Ex. M-2. From 9-12-1989 onwards she has continuously absented from duty. It seems that she had informed the concerned officer in Coimbatore Zonal Office that she would avail joining time from 9-12-1989 and would join on 15-12-1989.



However, she did not join till 30-12-1989. The zonal office had sent a letter Ex. M.3 dated 30-12-1989 stating that she had neither reported for duty on 15-12-1989 nor sent any information that she continued to remain unauthorisedly absent from 15-12-1989. The said letter was sent to her address at No. 18, 118, Devendra Street, U.H. Road, Coimbatore-1, Ex. M.4 shows that her father Sundaram had received the letter on her behalf on 5-4-1990. There after there was no communication from the petitioner. Once again the petitioner had sent a letter dated 'nil' marked as Ex. M.5 received in the Coimbatore Zonal office on 3-1-1990 stating as she was not keeping good health she may be granted leave without pay until her recovery. In the said letter she had given her address as No. 162-A, Murgia Devar Colony, Arumuga Nagar, Ramanathapuram, Coimbatore-45. On the same day, the bank sent Ex. M.6 letter advising her to send the medical leave application in the format enclosed alongwith the medical certificate for the consideration of the bank. Neither there was any reply to that letter nor did she send the format duly filled up along with medical certificate for consideration of the bank. Once again on 2-2-1990 the bank wrote Ex. M.8 letter stating that she failed to comply with the instructions and her absence from 15-12-1989 will be treated as unauthorised absence and that she will not be paid any salary for the said period and further appropriate disciplinary action will be taken against her as per rules. This letter has been sent to her last known address No. 162A Murugaya Devar Colony, Arumuga Nagar, Ramanathapuram, Coimbatore. Ex. M.9 shows that the letter has not been served on her. Once again the bank wrote another letter marked as Ex. M.10 dated 19-3-1990 saying that the previous letter sent to the address given by her was returned undelivered stating 'door locked, not found' and further added that she must report for duty within 30 days failing which it would be construed that she had no interest in the bank's job and she had left the job on her own violation and that she had voluntarily retired from the bank's service in terms of Cl. 17 of V Bipartite Settlement dated 10-4-1989. This letter was also sent to her last known address No. 122A Murugaya Devar Colony, Arumuga Nagar, Ramanathapuram, Coimbatore. However the said letter was also not delivered to her. As she failed to comply with the directions of the bank as indicated in their letter Ex. M. 10 the Bank had construed that she had left the job in her own volition and had voluntarily retired from bank's service with effect from 17-4-1990 i.e. from the date of expiry of 30 days notice in terms of Cl. 17 of V Bipartite Settlement. This letter was also sent to her last known address. However this letter was also not served on her. Curiously enough the petitioner had sent a letter dated 26-12-90 stating that she would send the medical certificate within few days. This letter shows the reference and another letter dated 2-1-1990 probably Ex. M.5 written by her. It is clear from this letter that after Ex. M. 5 which was received in the bank on 3-1-90 she had written Ex. M. 16 stating her Bangalore address which was received by the bank on 2-1-91. In between the said period of one year there was no communication from the petitioner to the bank, and such the failure of the communication from the petitioner made

the bank to construe that she had voluntarily retired from service as per Cl. 17 of V Bipartite Settlement.

The petitioner had sent Ex. M. 17 letter to the bank stating her Bangalore address requesting the bank to transfer her to any one of the branches shown in the letter, which are in and around Bangalore. Along with the said letter she had sent a medical certificate dated 8-6-1990 for her absence from 9-12-1989 to 10-6-1990. The bank had sent a reply Ex. M. 18 with copies of the letter dated 19-3-1990 and 2-5-1990 marked as Exs. M. 10 and M. 13 respectively and also informed the action taken by the management as if she had voluntarily retired from service by her own act. The bank further advise her to contact the Central Office at Madras for her terminal benefits. The said letter is marked as Ex. M.18 and the same has been sent to her Bangalore address. She has received the same under Ex. M. 19 acknowledgement. To that letter she had sent a reply Ex. M. 20 stating that she had already sent a letter dated 7-2-1990 informing the bank of her address at Bangalore for further correspondence. The bank sent a reply Ex. M. 21 saying that the alleged letter dated 7-2-1990 was not reached them.

The alleged letter dated 7-2-1990 is marked as Ex. W-6 wherein the petitioner has stated her Bangalore residential address. To prove the despatch of the said letter she had marked Ex. W-7 Certificate of Posting with the seal of the Bangalore G.P.O. dated 7-2-1990. It is the contention of the petitioner that though she informed her residential address at Bangalore the Bank want only had sent letters to her old address at Coimbatore. The petitioner has not raised any allegation against the bank or any of the officials working in the bank that with a view to terminate her services they had want only sent those letters to her previous address. There is nothing on record to show that due to some valid reason the bank officials had intentionally sent those letters to the address wherein the petitioner was not residing at that time. So, there was no reason for the bank officials to want only send those letters to her previous address. When we peruse the various documents it is clear that Ex. M. 3 letter addressed to her was received by her father. She had sent Ex. M. 5 stating that her new address No. 162A Murugaya Devar Colony, Coimbatore. From the said letter the bank came to know that she was residing in the said address and that was the last known address as far as the bank was concerned. In fact the bank had sent everyone of the communication thereafter to the said address, though some of the communications had been returned saying 'door locked, not found'. However the bank was in a helpless position. An employee who could not attend to work on account of her ill health should have informed her illness requesting the bank to grant leave. The petitioner has not written any such letter. In fact after Ex. M. 5 there was no communication from her. In order to bridge the gap, it seems that she had introduced Ex. W-6 letter. Ex. W-6 clearly shows that the bank was expecting medical certificate alongwith the duly filled up format from her. However the petitioner has not moved her little finger to send the medical certificate as requested by the bank. From the various letters marked on the

side of the bank it is clear that the bank wanted to have the prescribed leave application alongwith medical certificate as per rules. The petitioner failed to comply with the same. When the petitioner was examined as WW-1 before this Tribunal, has stated that she did not send Ex. W-6 letter dated 7-2-1990 under registered post. She had further admitted that as she was visiting Coimbatore she had given Coimbatore address; From her reply one can understand that though she was staying at Bangalore she gave Coimbatore address to the bank. She had sent Ex. M. 16 and M. 17 letters and she had not stated anything about her letter dated 7-2-1990 in these two letters. If really she had sent another letter on 7-2-1990 she would not have failed to refer the said letter. The said letter dated 7-2-1990 marked as Ex. M.1 shows that it is in her handwriting. In the circumstances of the case it can be concluded that the said letter is pressed into service with a view to show she had informed her Bangalore address to the bank. Ex. W-7 certificate of posting shows the despatch of the letter. It cannot be taken as an authenticated document like that of the registration receipt and acknowledgement card. The bank had no reason whatsoever to deny the receipt of the letter dated 7-2-1990. On the contrary the petitioner who had absented herself from work for a period of more than one year had every reason to introduce such document to prove that she had informed her address at Bangalore to the bank and inspite of it the bank had sent the communication to her old address. Considering the evidence of the petitioner and M.W. 1 and also the other documents marked in this I.D. we cannot come to any other conclusion except that the petitioner had want only introduced the letter dated 7-2-1990 (Ex. W-6) in order to put up a defence in the I.D. The petitioner had shown suphine in difference in informing the bank of the absence of a period over one year. With a view to absolve her liability she had thought fit to introduce the letter dated 7-2-1990 marked as Ex. W 6 and the same cannot be accepted.

The petitioner has admitted her absence since 9-12-1989. The allegation of the petitioner that the management knowing her Bangalore address had sent the communications to her previous Coimbatore address and thereby caused her the loss of job cannot be accepted. Forgetting for a moment the failure on the part of the management to ask her to produce the medical certificate in the format, was it not the duty of the petitioner to write to the employer stating her illness and substantiating the said fact by producing a medical certificate. If every employee takes defence that the responsibility rests solely on the shoulders of the management and no duty is cast upon the employee to intimate his or her absence to the management there will be chaos and confusion in the attendance of the employees and no industry can survive. The petitioner has shown suphine indifference during the period of her absence by not sending any communication to the respondent bank. The petitioner has submitted a ruling in *Muthu V. Indian Overseas Bank* reported in (1994 I L N P 823) wherein it was held that the date of notice has to be reckoned from the date of receipt of notice by the employee. However it is the contention of the petitioner that she

had not received any of the communication sent by the bank as she was in Bangalore. Her contention that she has already intimated her Bangalore address to the bank has not been proved. The petitioner has failed to intimate the change of address to the bank. The bank had no knowledge about the change of address and therefore it had sent the communication to the last known address of the petitioner. Therefore, though the dictum laid down in the said decision is acceptable it is not applicable to the instant case.

She has produced the medical certificate marked as Ex. M.17 only on 29-1-91 for her absence from 9-12-1989 to 8-6-90 (6 months). It is not the case of the petitioner that she had sent any medical certificate earlier. As per 1.17A of V Bipartite Settlement when an employee absents himself from work for a period of 90 days or more consecutive days without submitting any application for leave or for its extension... will be deemed to have voluntarily retired from bank service on the expiry of 30 days notice by the bank. The petitioner has not reported for duty within 30 days of the expiry of the notice. However it was argued on the side of the petitioner that Cl. 19(7) of the service conditions of the bank employees says that absence without leave or without sufficient grounds is a minor misconduct, and the termination of service is a punishment disproportionate to the alleged misconduct against the employee. The said interpretation by the petitioner cannot be accepted. In the present case, the bank came to the conclusion that because of the long absence of the petitioner without any intimation to the bank was deemed to have voluntarily retired from bank's service. No disciplinary action was taken against her on the ground of her absence which is a minor misconduct as per service conditions of bank employees. The action against the petitioner was taken under Cl. 17-A of the V bipartite Settlement and not under service conditions. The decision taken by the management against the petitioner is not a punishment and it was only as per Cl. 17A of the V Bipartite Settlement. The argument that the termination of service is disproportionate to the misconduct alleged to have been committed by her is not available to the petitioner in the instant case.

It was argued that long absence of the petitioner without submitting proper leave application with medical certificate was only due to circumstances beyond her control and considering her age and her previous record of service it is a fit case wherein the Tribunal can interfere with the punishment to dispense with justice to the petitioner. The petitioner has not committed any serious misconduct. Though she had remained absent, without sending prior intimation to the bank the same should not cause her the non-employment as it was not her intention to leave the bank's job. She is very young and a beginner in the service of the bank. The learned counsel appearing for the petitioner has prayed for mercy; by considering her age and the long number of service she has with the bank, she should not be rewarded for her own fault. So, re-

instatement from the date of award in her old seniority as on 8-12-1989 without continuity of service, back wages and other benefits will amply meet the ends of justice.

In the result, award passed for reinstatement from the date of this award in her old seniority as on 8-12-1989 without continuity of service back-wages and other benefits. No costs.

Dated, this the 24th day of April 1997.

S. THANGARAJ, Industrial Tribunal

WITNESS EXAMINED:

For Petitioner :

W.W.1—Tmt. S. Maheswari.

For Management side :

M.W.1—Thiru Hariram.

#### DOCUMENTS MARKED

For Petitioner :

Ex. W-1|24-1-91—Transfer application by the petitioner (xerox copy).

W-2|4-2-91—Letter from Management regarding terminal benefits (xerox copy).

W-3|16-2-91—Representation by the petitioner (xerox copy).

W-4|12-3-91—Reply from the Management regarding Bangalore address (xerox copy).

W-5|27-3-92—Reply by the Management before Conciliation Officer (xerox copy).

W-6|7-2-90—Letter from petitioner regarding change of address (xerox copy).

W-17/ —Xerox copy of Certificate of posting.

W-8|8-6-90—Medical certificate issued to the petitioner by Bangalore Doctor (xerox copy).

W-9|10-1-91—Medical certificate issued to the petitioner by Bangalore Doctor (xerox copy).

W-10|24-6-91—Dispute raised by the petitioner before Conciliation officer (xerox copy).

W-11|6-8-91—Letter from Management regarding Terminal benefits (xerox copy).

W-12|9-10-91—Letter from Management regarding Terminal benefits (xerox copy).

W-13|9-10-91—Letter from Management regarding Terminal benefits (xerox copy).

W-14|3-4-92—Rejoinder filed by the petitioner (xerox copy).

W-15|25-5-92—Conciliation Failure report (xerox copy).

W-16|9-9-92—Reinstatement order issued by the management to the co-employee (xerox copy).

For Management:

Ex. M.1|7-12-89—Letter from Branch Manager to Zonal Manager (xerox copy).

M-2|8-12-89—Letter from Zonal office to Branch (xerox copy).

M-3|30-12-89—Letter from Zonal office to petitioner (xerox copy).

M-4|5-1-90—Postal acknowledgement card (xerox copy).

M-5|5-1-90—Copy of undated letter from petitioner to zonal office recd. on 3-1-90 (xerox copy).

M-6|3-1-90—Regd. letter from Zonal office to the petitioner (xerox copy).

Ex. M.7|6-1-90 : Copy of Acknowledgement card.

M-8|2-2-90—Letter from Zonal office to petitioner (xerox copy).

M-9| —Returned cover containing letter dt. 2-2-90 of the respondent with endorsement not found door locked (xerox copy)

M-10|19-3-90—Letter from Zonal office to petitioner with Certificate of Posting (xerox copy).

M-11/ —Copy of Certificate of posting for letter dt. 19-3-90 (xerox copy).

M-12|—Copy of Returned cover with endorsement 'not found'.

M-13|2-5-90—Letter from Zonal office to petitioner (xerox copy).

M-14/ —Copy of Certificate of Posting letter dt. 2-5-90 (xerox copy).

M-15/ —Xerox copy of returned cover containing letter dt. 2-5-90.

M-16|26-12-90—Letter from petitioner to Zonal Manager (xerox copy).

M-17|24-1-91—Ido- with a Medical certificate dated 7-6-90 (xerox copy).

M-18|4-2-91—Letter from Zonal Manager to petitioner with certificate of Posting and acknowledgement card (xerox copy).

M-19|8-2-91—Acknowledgement from the Petitioner (xerox copy).

M-20|16-2-91—Letter from Petitioner to Zonal office (xerox copy).

M-21|12-3-91—Letter from Zonal Office to petitioner by RPAD/UCP (xerox copy)

M-22|27-3-92—Bank's written comment to Asstt. Labour Commissioner (xerox copy).

नई दिल्ली, 7 अगस्त, 1997

का.आ. 2175.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और

उनके कर्मचारों के बीच, अन्तर्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-08-97 को प्राप्त हुआ था।

[सं. एन-12012/303/91-आर्द्धार(बी-II)]  
सनातन, डैस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2175.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workmen, which was received by the Central Government on 6th August, 1997.

[No. L-12012/393/91-IR (B-II)]  
SANATAN, Desk Officer

### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 8 of 1992

#### PARTIES :

Employers in relation to the management of UCO Bank.

AND

Their Workmen.

#### PRESENT :

Mr. Justice A. K. Chakravarty,  
Presiding Officer.

#### APPEARANCE :

On behalf of Management : Mr. H. R. Khan, Legal Retainer of the Bank.

On behalf of Workmen : Mr. D. P. Roy,  
General Secretary of All India UCO Bank Staff Federation.

State : West Bengal. Industry : Banking

#### AWARD

By Order No. L-12012/303/91-IR(B.II) dated 12-3-1992 the Central Government in exercise of powers under section 10(1)(d)

and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:—

“Whether the transfer order dated 19th October, 1990 issued by Senior Manager (Sundries), UCO Bank, Calcutta Main Branch, giving effect to transfer Sh. Pandey is justified, correct? If not, to what relief the workman is entitled to?”

2. The Union's case for the purpose of this reference is that the concerned workman Shri Shniwa Nand Pandey was appointed in the UCO Bank on 30th April, 1962 as a subordinate staff and was posted at Burra Bazar Branch, Calcutta. In 1970 he became Daftary. He was transferred to Calcutta Main Office and was posted at the Stationary Department. Thereafter he obtained his promotion to the clerical cadre.

A disciplinary proceeding thereafter started against him on the allegation that he submitted false school leaving certificate in the promotional test and accordingly his promotion from subordinate cadre to clerical cadre was withheld. He was however exonerated of the charges and his promotion was allowed from October, 1981 counting his seniority from 1977. He thereafter passed School Final<sup>3</sup> Matriculation standard examination and he was shifted to Accounts Department as a General Clerk from the Filing Clerk of the Stationary Department.

The Union has further alleged that the policy regarding promotion and the selection for the posts carrying functional special allowance under the Bipartite settlement and related matters are determined by the memorandum of agreement with the management of UCO Bank and its workman in which All India UCO Bank Staff Federation, of which the concerned workman is a member, was a party. The promotional policy agreement of 1968 was amended from time to time and the last of such agreement was signed on 13th April, 1988. No further agreement having been signed thereafter, the previous promotion policy agreement dated 13-4-1988 still remains valid. In terms of the promotion policy agreement, the Bank is to pay functional/officiating special allowance to the employees who perform duties attracting such allowance. In paragraph 6.4 of the said agreement seniority for the purpose of offici-

ing/temporary performance of duties carrying functional special allowance shall be reckoned officewise/branchwise. The bigger offices like head office, Calcutta main office, Bombay main, India Exchange Place Branch, seniority shall be reckoned departmentwise.

The Union's further case is that the concerned workman Shri Shiwa Nand Pandey was seniormost clerk in the Calcutta Main Branch and in terms of the Promotion Policy Agreement, he was eligible to get chance of temporary officiation in place of Special Assistant Officers in the department as and when vacancy arises. Chance of temporary officiating/functional allowance comes on the basis of the seniority in the branch. The concerned workman was eligible for financial benefits by way of officiating allowance as on several occasions he officiated in temporary leave vacancy and got allowance for the same since 1982.

Shri Pandey thereafter was transferred to the Sundries Department of the Calcutta Main Branch all of a sudden by a letter dated 19th October, 1990. Challenging the transfer order as a malafide one being discriminatory, the union protested against such irregular and illegal transfer. The union gave another letter to the Assistant General Manager of the Calcutta Main Branch recording its protest. None of the protest, however, was given any heed by the Bank. The union has also alleged that there was no general departmental rotational duties of the clerical staff of the Calcutta Main Office and that the fact that Shri Pandey was singled out without any fault of his own, shows that the transfer was malafide one. By reason of the said transfer, he is incurring financial loss. He is being deprived of getting his officiating allowance in temporary vacancies occurring in the Stationery Department as he is not the seniormost clerk in the said department. It is alleged that Shri Pandey had been deprived for his refusal to oblige a member of the rival union. The union therefore prayed that Shri Pandey be paid temporary officiating allowance in leave vacancy of the Stationery Department and he may be send back to the Stationery Department.

3. The management of UCO Bank has denied that the transfer of Shri Pandey was illegal, irregular, discriminatory or a malafide one in its written statement. It is alleged by the management that at the relevant point of

time Stationery Department was under the overall control of the Sundries Department. It is also alleged that the action on the part of the Senior Manager (Sundries) in transferring Shri Pandey was in consomence with the instruction of the head of the Branch i.e. the Assistant General Manager of the Office and he was well within his right to re-allocate the duties of Shri Pandey in the Sundries Department after shifting him from Stationery Department where he was working at a stretch for about 20 years. The Bank has also alleged that it is not feasible to maintain inter-departmental rotational list owing to insurmountable difficulties, though inter departmental rotation of staffs takes place in almost all departments in a phased manners. The Bank has further alleged that Shri Pandey, as a seniormost clerical employee in the Stationery Department, was getting officiating allowance but for that reason alone he cannot claim any right of getting the said allowance all through. Further, the inter-departmental transfers are made for the purpose of acquainting the senior clerks with the works in other departments. It is further alleged that mere officiation to any particular post for a small time to meet the exigency of any situation cannot develop any right to any employee for obtaining the same relief even though he is junior in the branch where he is shifted. The Bank has accordingly prayed for rejection of the claim of the union.

4. Heard the representatives of both the parties.

5. So far as the factual aspect of the matter is concerned, there is no dispute in this case. The concerned workman was admittedly appointed in 1962 in the Burra Bazar Branch of the UCO Bank and that he obtained the promotion in the clerical grade in 1981, though his seniority was counted from 1977. It is also an admitted fact that he remained posted in the Stationery Department for about 20 years and he being the seniormost clerk in the said department used to receive officiating/functional allowance for officiation in the higher post of the said department as and when vacancy occurred in such post from time to time. The difficulty cropped up as the concerned workman has not become entitled to get such officiating/functional allowance due to his transfer to the Sundries Department from the Stationery Department where he is not the seniormost clerk.

6. Such transfer from Stationery Department to Sundries Department has been challenged as illegal, arbitrary and mala fide by the representative of the union mainly on two grounds namely :—

(i) that the transfer order is illegal and arbitrary as under the rules the Bank management cannot deprive any workman from getting his existing benefits; and

(ii) The transfer order is discriminatory.

7. One witness namely S. K. Chakraborty was examined on behalf of the Bank and the workman concerned examined himself on behalf of the union and documents were produced by both sides. The workman has produced some papers to show that he was directed to officiate on different occasions. The union also produced a circular issued by the management dated 10-3-1993 containing guidelines for transfers. Management has produced the position of seniority of the concerned workman in the Sundries Department and the promotion policy settlement for the workmen staff dated 13th April, 1988.

8. The representative of the union failed to show any provision in the promotion policy settlement for workmen staff in support of his contention that the departmentwise transfer is not valid or it is illegal or not in accordance with the settlement. Rather, from its own exhibit M-5 it appears that the government guidelines for transfer of award staff was circulated vide AGM-DM Circulars No. 53/82 dated 2-9-1982, No. 48/83 dated 5-9-1983 and No. 33/85 dated 27-5-1985. It was stated there that the guidelines for transfer indicated in the said circular had been implemented by other nationalised banks, though it could not be implemented by the UCO Bank. It is therefore clear that the policy of transfer of staff was accepted as a matter of principle. It is therefore no good saying that the transfer of clerical staff is an unknown phenomenon and it was not legal and proper.

9. The main grievance of the workman concerned is that he is being deprived of receiving his officiating/functional allowance which he used to receive because of his seniority in the Stationery Department. Receipt of such allowance was purely transient in nature having nothing to do with his main appointment

as a clerk of the establishment. Mere receipt of such allowance does not vest the receiptant of it any right of receiving such allowance for all time to come during his employment. Paragraph 6.14 of the Promotion Policy Settlement for Workmen staff clearly lays down that "No employee will be entitled to claim permanent posting in a post carrying functional special allowance or promotion to Officers' cadre in Junior Management Grade Scale-I merely by reason of his having been given an opportunity to work in such a post temporarily" The workman therefore had no right to claim such right to receive special allowance even though he has not the seniority in the department where he has been transferred.

10. The representative of the management has submitted that the departmentwise transfer cannot really be said to be a transfer. It is merely a posting. The word "transfer" has a wide connotation and it includes transfer, both departmental or otherwise. A departmental transfer cannot be said to be merely posting as all transfer relates to some posting. I have shown from the circulars and the guidelines of transfer submitted by the workmen that transfer policy was accepted by all nationalised Banks, though the provisions of the same might not have been implemented strictly in some Banks. It should also be noted in this connection that the concerned workman was attached to the Stationery Department of the bank for a sufficiently long period of time. The contention of the representative of the Bank that the administrative requirements and the policy pursued by the Bank compels such transfer, cannot be doubted because any particular employee should not be allowed as per guidelines to remain in the same department or station for a long period of time and that it is also in the interest of the employee, as such transfer shall help in rounding up all the employees by better exposure and experience.

11. In so far as the allegation that the concerned workman was singled out for transfer, suffice this to say that the Bank having the right to effect such transfer, it cannot be challenged, unless some mala fides are shown. In the instant case, apart from the loss of such functional allowance, no mala fides on the part of the Bank is shown. The management cannot have any mala fide because, in any event, the amount received by the concerned workman prior to his transfer shall be available to

the other employees who stopped in his shoes in the Stationery Department.

12. The union, therefore, has failed to prove that the concerned workman had any right to claim any allowance available to him due to fortuitous posting in a particular department. A reference may be made in this connection to the case of UCO Bank & Others v. Sushanta Mukherjee & Others, reported in 1991 Lab. I.G. 1959, where it was held :—

“Transfer is an ordinary and usual incidence of service. The right of the employer to appoint cannot but carry with it the right to post the employee anywhere else, unless the contract of service or the governing Rules rule out such right. ....

An organisation like the appellant Bank should be presumed to know better than the Courts as to which of their employees should be posted where and under what circumstances and what are the bonafide requirements of administrative expediency and exigencies. ....”.

13. Upon consideration of the evidence, both oral and documentary as well as the position of law in the matter, I am to hold that the transfer order dated 19-10-1990 giving effect to the transfer of Shri Shiwa Nand Pandey was correct and justified. The workman accordingly shall not be entitled to any relief in the case.

This is my Award.

Dated, Calcutta,

The 24th July, 1997.

A. K. CHAKRAVARTY, Presiding Officer

नई दिल्ली, 7 अगस्त, 1997

का.घा. 2176.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-08-97 को प्राप्त हुआ था।

[सं. एल-12012/708/88-आईआर(बी-II)]  
सनातन, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2176.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workmen, which was received by the Central Government on 6th August, 1997.

[No. L-12012/708/88-IR (B-II)]  
SANATAN, Desk Officer

### ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,  
TAMIL NADU, MADRAS-104

Thursday, the 20th day of March, 1997

PRESENT :

Thiru S. Thangaraj, B.Sc., LL.B., Industrial Tribunal.

Industrial Dispute No. 48/1989

(In the matter of the dispute for adjudication under Section 10(1)(d) of the I.D. Act, 1947 between the Workmen and the Management of Union Bank of India)

BETWEEN

The Workmen represented by The General Secretary, Union Bank Employees' Union, 139, Broadway, Madras-600 108.

AND

The Zonal Manager, Union Bank of India, Southern Zonal Office, IIIrd Floor, 129, Greaves Road, Thousands Lights, Madras-600 006.

REFERENCE :

Order No. L-12012/708/88-D.II(A), Ministry of Labour, dated 18th May, 1989, Government of India, New Delhi.

This dispute coming on for final hearing on Thursday, the 6th day of February, 1997, upon perusing the claim, counter and all other material papers on record, and upon hearing the arguments of Tvl. Row & Reddy & Miss. Poornima Maduram, Advocates appearing for the Petitioner—union and of Thiru N. C. Srinivasavaradhan, Advocate appearing for the management and this dispute having stood over till this day for consideration this Tribunal made the following award.

## AWARD

The Government of India, Ministry of Labour in their order No. L-12012/708/88-D.II(A) dated 18th May, 1989 have referred this dispute u/s. 10(1)(a) of the I.D. Act to this Tribunal to adjudicate the following issue :

"Whether the action of the management of Union Bank of India, in terminating the services of Shri C. Bhoopathy is justified or not, to what relief is the workman entitled?"

2. On service of notice the petitioner and the respondent appeared before this Tribunal and filed their claim statement and counter statement respectively.

3. The main averments found in the claim statement filed by the petitioner are as follows.—Shri C. Bhoopathy was appointed by an order dated 14th October, 1981 as peon-cum-hamal by the Union Bank of India. His basic pay was fixed at Rs. 245 plus D.A. and H.R.A. as applicable to the area to which he was posted. As per the order he should be on probation for 6 months after which he will be confirmed in his work, if his character and conduct were found to be satisfactory. He was posted to Naidupuram branch of the respondent bank on 29th October, 1981. He reported for duty on 2nd November, 1981 and was asked to join duty on 3rd November, 1981. He was on probation from that date onwards. On 12th April, 1982 the branch manager did not allow Bhoopathi to enter into the office. On 13th April, 1982 he was physically removed from the workplace. He sent telegram to the regional manager and also wrote a letter. He met the regional manager in person and as per the direction of the regional manager he continued his work in the said branch. In the last week of May 1982 while he was on leave the branch manager Naidupuram informed that as per the order dated 21st May, 1982 by the Central Office Bombay his services were terminated with effect from 1st June, 1982. The termination was arbitrary and illegal as it does not speak about any reason for the said termination. As there was no order extending his probation at the end of six months on 3rd May, 1982 he was deemed to be confirmed in service. Hence the termination is illegal. The management in his letter addressed to the Assistant Labour Officer has alleged that on 3rd April, 1982 Bhoopathi did not account for some cash given to him to buy stamps and when asked for an explanation he went on leave on 7th April, 1982 and 8th April, 1982. On 12th April, 1982 he left the office on his own accord. The bank claimed that his probation was extended for another three months. Para 495 Chapter XXV of Sastri Award states that the period of probation may be extended provided due notice in writing is given to the employee and his consent

in writing is obtained before the extension of the period of probation. When he was not even informed about the extension of the probation and if consent was not obtained after the expiry of six months he is deemed to have been confirmed in service as per Sastri Award. If he had committed any misconduct a fair chance should have been given to him for his explanation before taking harsh steps of termination. Assuming that his probation was extended the management ought to have issued a charge sheet called for his explanation and conducted an enquiry for the alleged misconduct. When the management has not taken any such steps the termination is bad in law. Award may be passed for the reinstatement, with continuity of service with full back wages and all other attendant benefits.

4. The main averments found in the counter filed by the respondent are as follows.—The letter dated 4th October, 1982 alleged to have been written by the petitioner has not reached the respondent. There was no representation from the petitioner union till the respondent received a copy of the letter dated 9th October, 1983 addressed to the Assistant Labour Commissioner (Central Madras). As the Assistant Labour Commissioner called upon the respondent to offer his remark the respondent sent a letter dated 19th April, 1988 detailing the circumstances in which the services of C. Bhoopathi were terminated. The order of reference has been made after nearly six years of raising the dispute. The reference should be rejected on the ground of delay and laches. The petitioner union must satisfy that the cause of the worker C. Bhoopathi was taken up by a substantial section of the workmen of the respondent. The authority of the union to raise and maintain the present dispute is questioned by the respondent. There is no valid industrial dispute regarding the termination of the services of Bhoopathi. By an appointment order dated 14th October, 1981 Shri C. Bhoopathi was appointed on probation for a period of 6 months. He joined Naidupuram branch of the respondent bank on 3rd November, 1981 and his probation was due to expire on 3rd May, 1982. During his probationary period the branch manager Naidupuram sent two letters stating that the services of Bhoopathi were not satisfactory. On receipt of the first report the respondent directed the branch manager to put the concerned workman on notice about the deficiencies notices and to improve his performance. Accordingly he was informed of his deficiency. When he was inside with the work of payment of bills he neither paid the sum nor was returning the money taken on suspense account to the cashier. When he was informed about the seriousness of the lapses he did not take notice of the same. On 3rd April, 1982 the cashier made a report that the workman had not returned the amount taken by him for postage for purchase of an insured cover nor had he purchased the cover. On 5th April, 1982 when



a memo was issued on him he refused to accept the memo and started absenting himself from duty on 7th April, 1982 and 8th April, 1982. As the branch manager questioned him he made a complaint against the branch manager that on 12th April, 1982 the workman refused to receive the letter the office, the branch manager obstructed him. In view of his unsatisfactory performance, his probation was extended by 3 months and the same was communicated to him by a letter dated 22nd April, 1982 the workman refused to receive the letter and the same was recorded in the presence of two other employees of the bank. During the extended period of probation also there was no improvement in his performance and on 21st May, 1982 an order was passed terminating his probation with effect from 1st June, 1982. While he was probationer and when his services was unsatisfactory his probation was terminated on 1st June, 1982. The petitioner is not entitled to any relief much less the relief of reinstatement. Award may be passed rejecting the claim.

5. Two witnesses were examined on the side of the petitioner and Exs. W-1 to W-5 have been marked. One witness was examined on the side of the respondent and Ex. M-1 to M-18 have been marked.

6. The point for our consideration is : Whether the action of the management of Union Bank of India in terminating the services of Shri C. Boopathy is justified ? If not, to what relief is the workman entitled ?

7. The Point.—The workman by name Boopathy was selected as Peon-cum-Hamal by respondent Union Bank of India, on the basic pay of Rs. 245 plus dearness allowance plus House Rent Allowance as applicable to the area to which he was posted. He was posted to the Naidupuram Branch of the respondent and he joined on 3rd November, 1981, Ex. M-1 appointment order shows that his period of probation was 6 months, and during the period of probation his services are liable to be terminated by one month's notice or on payment of month's pay and allowances in view notice. Ex. M-2 clearly shows the above two conditions. By accepting the conditions, the workman had joined the respondent-bank. While the respondent was employed as Peon-cum-Hamal the report of the branch manager Ex. M-10 was sent to the Head Office stating that he is unable to assist the branch and shows lack of understanding. Further, it was also stated that efficiency and self confidence and also performance in business development were very much lacking. The Head Office wrote Ex. M-11 saying that the Branch Manager, Naidupuram can put him on notice about the deficiencies he had noticed in the workman with caution to improve his performance. The period of probation 6 months had to expire on 3rd May, 1981. In

march, 1989, once again Branch Manager sent another report Ex. M-12 saying that his manners, conduct, courtesy and cooperation were below average and application to work, efficiency, and self confidence are very much lacking. It was further reported that he was unable to pick up the day to day work and of late started quarrelling with clerical staff and he has neither paid electricity bills, telephone bills for which amounts were entrusted to him nor credit back the amount to the suspense account. He has also not returned the amounts taken in suspense account immediately. Branch Manager has also given Ex. M-14 letter regarding his behaviour. Further, the Branch Manager once again sent Ex. M-15 complaint regarding the behaviour of the workman Boopathy to the management. On 22nd April, 1982 before the completion of six months period of training the management has issued Ex. M-16 letter extending the probation by three months. However, the workman Shri Boopathy refused to receive the memo and to that extent the Branch Manager and one Chellaiah, Clerk-cum-Cashier have made endorsement Ex. M-17 on the back side of Ex. M-16. For his refusal to receive the order for the extension of his probation by 3 months, the Branch Manager wrote Ex. M-18 to the Head Office. Thereafter the Head Office passed Ex. M-3 order on 21st May, 1982 terminating the services of the workman. Against the order of termination, the industrial dispute has been raised by the petitioner-union.

8. It was contended on the side of the management that though the order of termination was passed on 21st May, 1982, the reference has been made only on 18th May, 1989 and such a long delay will make the reference invalid. It is clear from Ex. M-4, that the petitioner-union has raised the dispute on 9th August, 1983. It is thereafter the delay had been caused due to official reasons in referring the dispute for adjudication. Such delay cannot be considered to be material. In B. R. Herman and Mohatta (India) (Pvt.) Ltd. Vs. Seventh Industrial Tribunal, West Bengal [1977 L.I.C. (NOC) 13] at Page 14, the Calcutta High Court held :

"While it is no doubt not desirable that there should be unreasonable or inordinate delay in making reference by the appropriate State Government but delay or laches cannot be made a ground, for striking down the reference."

From the above decision it is clear that such delay in making the reference cannot be considered as delay or laches for striking down the reference. This decision of the Calcutta High Court will clearly show that by saying delay or laches on the part of the petitioner—union the reference cannot be thrownout.

9. It was contended by the respondent-management that the petitioner-union is not validly raised this dispute u/s. 2K of the I.D. Act, 1947 and the petitioner has no representative capacity to raise a valid dispute. WW2 the President of the petitioner-union has clearly stated that they raised the dispute on 3rd October, 1983, in the General Body. However, he has not filed the resolution. Our High Court in *Workmen of Brooke Bond (I) Ltd., Vs. Industrial Tribunal* (1989 II LLN P. 699) held:

"However, it has got to be noted that the strength of the workmen espousing the case must lead to a legitimate inference that the dispute is one which affects the workman as a class. The industrial dispute could be taken up, either by the union of workmen or by an appropriate number of workmen of the management. To put it in other words, it must be a collective dispute and that alone will constitute an Industrial dispute. The concept of collective dispute should not be construed to mean that all the workmen of the management or a majority of them should sponsor and support the dispute. It would be sufficient, if the industrial dispute could be raised even by a minority union or by an unrecognised union. The above proposition could not be disputed since they are those gleaned from the pronouncements of the highest Court in the land."

From this decision of our High Court and from the evidence of WW2, it is to be included that the dispute has been validly raised by the petitioner-union.

10. Coming to the main issue of termination of the services of the workmen, it is clear from Ex. M-1 appointment order that he will be on probation for a period of 6 months, after which period his services will be confirmed. 2. During the period of probation, his services are liable to be terminated by one month's notice or on payment of one month's pay and allowances in lieu of one month's notice. The workman had agreed to the said condition and thereafter joined duty as Peon-cum-Hamal. It is clear from various letters written by Branch Manager, Naidupuram, branch that his work and conduct was not satisfactory during the period of probation. MW1 was the concerned officer in the Naidupuram branch when the workman Shri Boopathy served the branch, for the period of 6 months as probationer. It was argued that from the very beginning MW1 has been sending reports against the work and conduct of the workman Boopathy. MW1 had no axe to grind against the workman. He had clearly stated that he had put in 21 years of service in the bank. Such an experienced

official will not have any grudge against the workman provided he did his job to the satisfaction of the Branch Manager. In spite of the various reports sent by MW1 referred to above, the workman had never shown any interest in learning the work. He had adopted a recalcitrant attitude in not learning the work and also he had not shown properly handled the funds of the bank. Whenever amounts were handed over to him, for payment of electricity bills and telephone bills, he had neither paid the amount nor returned the amount drawn under suspense account. He did the very same thing when cash was given to him for purchase of stamps. Further from the report of the Branch Manager, it is clear that he was unable to do the work assigned to him to the satisfaction of the authorities. Therefore, the respondent bank had no other go except to terminate the services of the workman.

11. It was contended on the side of the workman that for the extension of his probation for a further period of 3 months, no proper notice was served on him as contemplated under Sastry Award. Para 495 of Sastry Award says that the Sen Award fixed the period of probation at 6 months which in certain cases would be extended by 3 months and whenever extension of 3 months was made, due notice in writing should be given to the workmen and their consent in writing is obtained before the extension of period of probation. In all other cases, after the expiry of the period of 6 months should be deemed to have been confirmed unless their services are dispensed with on or before the expiry of the period of probation. The said para 495 was pressed into service by the petitioner-union and it was further argued that the consent of the workman in writing was not obtained for the extension of his probation by 3 months. He joined on 3rd November, 1981. His probation of 6 months had to expire on 3rd May, 1982. On the report sent by Branch Manager his probation was extended by 3 months under Ex. M-16. When the Bank Manager tried to get his consent in Ex. M-16, the workman refused to receive it. To that extent the Branch Manager has made an endorsement on the backside of the order and Mr. Chellaiah, Clerk-cum-Cashier, has signed as a witness. The said endorsement is marked as Ex. M-17. When the workman had refused to receive the very order of extension of probation, there was no possibility for the management to get his consent letter. However, the succeeding Desai Award passed in June 1962 has reviewed the above provision found in Sastry Award. Desai Award while dealing with Para 495 of Sastry Award at para 21.18 says:

"I do not see any necessity for a provision to that effect that must consent in writing before his period of probation can be extended for a further period of three months as provided in the Sastry Award. I direct that in the case of a person whose

work was not found to be quite satisfactory and whose period of probation, in the opinion of the bank should be extended for a further period of 3 months, in order to afford him an opportunity to improve and give satisfaction to the bank, it would be open to the bank before the expiry of his period of probation to extend the period of probation for a further period of three months by giving notice in writing to him to that effect. If he does not desire to continue as a probationer for such further period, it would be open to him to intimate the bank to that effect and leave the service of the bank."

So, from Para 21.18 of Desai Award, it is clear that for extending the period of probation for 3 months, consent of the workmen need not be obtained. Therefore, the contention of the petitioner that no consent was obtained from the workman for extending the period of probation for a further period of three months will be of no avail.

12. It was argued on the side of the petitioner that terminating the services of the workmen during the extended period of probation is not in accordance with various awards. The Desai Award clearly says that the consent of the workman need not be obtained. Further Clause 2 of the appointment order clearly says :

"During the period of probation his services are liable to be terminated by one month's notice or on payment of one month's pay in lieu of notice."

So, there is a provision for terminating the services during the period of probation. The period of probation includes the extended period of probation also. When the Management terminated the services of the workmen under Ex. M-3 in lieu of one month's notice a salary for one month was also paid, by way of a draft for Rs. 592.90 which is clearly stated in Ex. M-3. In C. M. Jitendra Kumar Vs. Management of Bharat Earth Movers Ltd. (1885 LIC P. 1933), Karnataka High Court held :

"There is no compulsion in law, that a probationer must be retained till the last date of the period of probation even if non-fulfilment of the conditions of probation, stand established, even earlier, and their fulfilment is found impossible during the rest of the period."

The decision further strengthens the contention of the management. Hence termination is an order.

13. It was argued on the side of the petitioner-workman that in Ex. M-12 the Branch Manager has written to the Head Office stating that "in order

to teach him a lesson in the beginning itself, we recommend that he may be suspended from service" and so the termination of service is punitive in nature and for such termination the management ought to have taken disciplinary proceedings against him before terminating his service. It was further contended that the failure on the part of the management to follow the procedure laid down in I.D. Act, before termination of the petitioner will make termination void. The petitioner-union submitted a ruling of our High Court in S. Suresh Vs. Tamil Nadu Meat Corporation Ltd., (1990 (2) LLN P. 348) wherein it was held :

"Indeed, this is a case which the appellant is entitled to succeed on the statement made by the Corporation itself that it was satisfied about his untrustworthy conduct. Hence the order of termination is of a panel character and has to be set aside since the appellant had no opportunity to establish his innocence. The appellant will be deemed to be in employment through out and will be entitled to all consequential benefits."

However, the said ruling is not applicable to the instant case for the simple reason that the case referred above was concerned with a Junior Assistant in Tamilnadu Meat Corporation. The fact of the case shows that he was a permanent employee. In the instant case, the workman is only a probationer and we have already seen that even in the appointment order there is a provision for termination of the services of the petitioner if he is found not suitable. Accordingly, the respondent-management has terminated the services of the petitioner. Therefore, the above ruling rendered in the case of the permanent employee is not applicable to the case of a probationer.

In L. Michael & Anr. Vs. M/s. Johnson Pumps India Ltd., (1975 1 LLJ P. 262) Supreme Court held :

"The Tribunal has power, and, indeed, the duty to X-ray the order and discover its true nature, if the object and effect, if the attendant circumstances and the ulterior purpose is to dismiss the employee because he is an evil to be eliminated. But if the management to cover up its inability an enquiry, illegitimately but ingeniously passes an innocent looking order of termination simpliciter, such action is bad and liable to be set aside.

It is clear from the aforesaid facts that from the very beginning the workman had not shown any interest in work and he was found not to be suitable for the job. Accordingly the management had passed the order of termination. The said order has not been passed with a view to cover up its inability to

hold an enquiry but ingeniously an innocent looking order of termination simpliciter. The facts show that by the management has not passed order of discharge by avoiding disciplinary action against the workmen. The management has also not stated any serious allegations against the workman, to frame charges and to conduct disciplinary enquiry against him. The various incidents narrated by the Branch Manager in his letters would vouch the fact that from the very beginning the workman had not evinced interest in discharge of his duty to the satisfaction of his superiors and even his basic knowledge to understand things was also in dispute and therefore the order of termination passed by the management has to be upheld.

In the result, award is passed dismissing the claim of the petitioner. No costs.

Dated, this the 20th day of March, 1997.

S. THANGARAJ, Industrial Tribunal.

#### WITNESSES EXAMINED

For Workman :

W.W. 1—Thiru C. Bhoopathy.

W.W. 2—Thiru Q. A. Aziz.

For Management :

M.M. 1—Thiru S. Thangavel.

#### DOCUMENTS MARKED

For Workman :

Ex. W-1|29-10-81—Appointment letter issued by Naidupuram Branch (xerox copy).

Ex. W-2|1-6-82—Termination order issued by Naidupuram branch (xerox copy).

Ex. W-3|13-4-82—Telegram from petitioner to the Regional Manager, Madurai (xerox copy).

Ex. W-4|13-4-82—Letter from petitioner to the Regional Manager, Madurai (xerox copy).

Ex. W-5| —Letter from Petitioner-union to the Assistant Labour Commissioner (Central) raising dispute (xerox copy).

For Management :

Ex. M-1|19-4-88.—Letter from petitioner to Asst. Commissioner of Labour (xerox copy).

Ex. M-2|14-10-81—Appointment order issued to petitioner (xerox copy).

Ex. M-3|21-5-82—Termination order issued to petitioner (xerox copy).

Ex. M-4|9-8-83—Letter from petitioner to the Asst. Labour Commissioner (Central) Madras (xerox copy).

Ex. M-5|11-6-85—Letter from petitioner to the Asst. Labour Commissioner (Central) Madras (xerox copy).

Ex. M-6|7-3-86—Letter from Regional Labour Commissioner to the respondent (xerox copy).

Ex. M-7|19-4-88—Letter from respondent to Assistant Commissioner of Labour (xerox copy).

Ex. M-8|26-4-88—Letter from Assistant Commissioner of Labour to the respondent (xerox copy).

Ex. M-9|2-11-88—Minutes of Conciliation Proceedings held on 2nd November, 1988 (xerox copy).

Ex. M-10|December, '81—Confidential report (xerox copy).

Ex. M-11|February, '82—Letter from Regional Office to Branch Manager (xerox copy).

Ex. M-12|March '82—Confidential report (xerox copy).

Ex. M-13|3-4-82—Letter from Postal Department to the Branch Manager (xerox copy).

Ex. M-14|5-4-82—Memo issued to petitioner (xerox copy).

Ex. M-15|15-4-82—Letter from Naidupuram branch, Kodaikanal to Regional Manager, Madurai (xerox copy).

Ex. M-16|22-4-82—Letter from respondent to petitioner (xerox copy).

Ex. M-17—Endorsement made by petitioner refusing to receive Ex. M-16 (xerox copy).

Ex. M-18|27-4-82—Letter from the Branch Manager to the Superintendent (xerox copy).

नई दिल्ली, 13 अगस्त, 1997

का.आ. 2177—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण मंत्रालय के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-08-97 को प्राप्त हुआ था।

[संख्या एन-12012/428/91-आईआर(बी-II)]  
सनातन, ईस्क अधिकारी

New Delhi, the 13th August, 1997

## AWARD

S.O. 2177.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 8-8-1997.

[No. L-12012/428/91-IR(B-II)]

SANATAN, Desk Officer

## ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,  
TAMIL NADU, MADRAS

Wednesday, the 2nd day of April, 1997

## PRESENT :

Thiru S. Thangaraj, B.Sc., L.L.B.,  
Industrial Tribunal.

Industrial Dispute No. 38 of 1992

(In the matter of the dispute for adjudication under  
Section 10(1)(d) of the I.D. Act, 1947  
between the Workmen and the Management  
of Canara Bank, Madras).

## BETWEEN

Sh. B. Mahesh,  
S/o R. Balasubramanian,  
No. 9, Maniappan Koil Street,  
Nadoor,  
Mettupalayam-641301.

## AND

The Manager,  
Canara Bank,  
Mettupalayam Branch,  
Coimbatore.

## REFERENCE :

Order No. L-12012/428/91-IR(B. II),  
Ministry of Labour, dated 26-3-92,  
Government of India, New Delhi.

This dispute coming on for final hearing on Tuesday, the 11th day of March 1997, upon perusing the claim, counter and all other material papers on record, upon hearing the arguments of Thiru Senthilnathan & S. Ravi, Advocates appearing for the petitioner and of Thiru T. S. Gopalan & S. Ravindran, Advocates appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following :

Government of India, vide their Order No. L-12012/428/91-IR(B. II), Ministry of Labour, dated 26-3-1992, have referred this dispute under Section 10(1)(d) of the I.D. Act, 1947 to this Tribunal for adjudication of the following issue :

"Whether the action of the management of Canara Bank is justified in terminating the services of Sh. B. Mahesh, a daily wage-worker with effect from 15-5-91? If not, to what relief is the workman entitled to?"

2. On service of notices, both the petitioner and the respondent appeared before this Tribunal and filed their claim and counter statement respectively.

3. The main averments found in the claim statement filed by petitioner are as follows : The petitioner had worked as a peon under the respondent, Canara Bank, Mettupalayam Branch for the period between 14-4-88 to 7-10-89. He was treated as a daily wager and he had worked for more than 240 days in a calendar year. All of sudden he was denied employment by the respondent. When the petitioner questioned the respondent's officials told him that as per rules another person was appointed. The action of the respondent in refusing work to the petitioner was illegal, unjustified and contrary to the principles of natural justice. The respondent contended before the Conciliation Officer that there was no relationship of employer and employee between the respondent and the petitioner as his engagement was purely contractual on day-to-day basis and such contract comes to an end on each working day. The contention of the management is contrary to the provisions of the I.D. Act. As the petitioner has worked for 240 days in 12 calendar months. The respondent should invoke Section 25F of the I.D. Act and the failure to invoke Section 25F will vitiate the termination. The respondent has issued a certificate to the petitioner and they cannot go back from the said certificate. As the non-employment of petitioner was unjustified, he may be re-instated with continuity of service, back wages and other attendant benefits.

4. The main averments found in the counter filed by the respondent are as follows : The respondent bank has laid down detailed procedure for empanelling of daily wagers and as per the procedure, every establishment has to place its indent about the number of daily wagers which it would require to meet the absenteeism of permanent sub-staff and on the basis of the requirement, the Circle Office will recruit daily wagers and allot them to the concerned branches. The daily wagers will be kept in a districtwise panel and will be absorbed to permanent vacancies as and when vacancies arise as per seniority provided they are found suitable and conform to all the qualification at the time of absorption. In the branch of the respondent at Mettu-

palayam, there are 3 vacancies of peons for quite some time prior to 1988 and there were 2 peons and one post was lying vacant pending appointment of regular sub-staff. The branch was engaging one Sakthivel who was a daily wager for Mettupalayam branch and Sakthivel was continuously engaged in the said branch. In the absence of the daily wager, the bank will engage a coolie but not a daily wager. The petitioner Mahesh was neither sponsored through Employment Exchange or empanelled in the panel of daily wagers. He was engaged on a temporary basis as a coolie unauthorisedly by the Branch Manager. A temporary hand appointed for exigency of service has no legal right for absorption. The petitioner was engaged as coolie from April 1988 to October 1989. In October 1989, the vacant post was also filled up by transferring the sub-staff by name S. R. Marudhan from Coonoor branch. In that context, the petitioner had approached Shri Ramasami, Manager, Mettupalayam branch and requested him to issue a service certificate as he required the same to get an appointment in the Indian Overseas Bank. Accordingly, the Manager Sh. N. Ramasami, issued a certificate dated 7-12-90. The petitioner was not engaged as a daily wager but was engaged only as a coolie unauthorisedly by the Branch Manager. The petitioner's employment in the bank was purely on contractual basis on day-to-day basis and such contract of engagement come to an end at the time of end of each working day. The discontinuance of engagement will not amount to termination of service or retrenchment. His engagement was not continuous as he was engaged only on certain exigencies. The petitioner has not worked for 240 days in 12 calendar months. The non-engagement of the petitioner will not violate Section 25-F of the I.D. Act. There is no merit in the petition and the same deserves to be dismissed.

5 One witness was examined on the side of the petitioner and Exs. W-1 to W-6 have been marked. One witness was examined on the side of the management and Exs. M. 1 to M. 16 have been marked.

6 The Point for our consideration is : Whether the action of the management of Canara Bank is justified in terminating the services of Sh. B. Mahesh, a daily wage worker with effect from 15-5-89? If not, to what relief is the workman entitled to?"

7. The Point: The petitioner Sh. B. Mahesh, was engaged by Mettupalayam branch of the respondent Canara Bank as a peon. He has stated in the petition that he was engaged between 14-4-88 to 7-10-89 as Peon and was treated as a daily wager. He has further contended that he has worked for a more than 240 days within 12 calendar months. On the basis of which he further claimed that his non-engagement was violative of Section 25F of the

I.D. Act, and he has to be reinstated with continuity of service and back wages. The management denied the entire allegation and had stated that he was unauthorisedly engaged as a coolie by the then Branch Manager and as and when exigencies arose that he had not put in 240 days service within 12 calendar months and that his disengagement is not violative of Section 25F of I.D. Act. Further it was contended on the side of the management that they have a detailed procedure for empanelment of daily wagers and as per the procedure the establishment has to place its indent about the number of daily wagers which it would require to meet the absenteeism of permanent sub-staff and on the basis of the requirement, Circle office will recruit daily wagers and allot them to the concerned branch. It was also stated on the side of the management that out of three vacancies, for sub-staff in the Mettupalayam branch one was lying vacant and in that vacancy one Sakthivel, an empanelled daily wager was engaged and subsequently Sakthivel was absorbed in the permanent vacancy. As one of the permanent sub-staff was on leave, the petitioner was engaged as a coolie and not as a daily wager. It is clear from the counter, the documents marked and also the evidence of MW1, that the respondent Canara Bank, has the system of engaging daily wagers from the panel which they maintain to engage reasons in the case of absence of the regular sub-staff. It is not the case of the petitioner that his name was empanelled as daily wager. Ex. M. 5 norms/procedures for recruitment of sub-staff cadre clearly says.

12. "No candidate shall be engaged without obtaining all the document/testimonials and without prior approval from Staff Section (W)."

13. No candidate from any other source shall be engaged under any circumstances."

From Ex. M. 5, it is clear that only the candidates whose names are found in the panel will be engaged whenever the permanent sub-staff was either absent or on leave. The petitioner's name was not found in the panel and therefore as per Ex. M. 5, he was not entitled for the engagement. However, he was engaged in the Mettupalayam branch by some officials. One among them Shri N. Ramasami is examined as MW 1. Ex. M2, the panel does not show the name of the petitioner. The management when came to know about the engagement of the petitioner have called for remarks from Shri Narayanan then Senior Manager, Mettupalayam, branch vide their letter dated 29-3-93. He has explained vide his letter dated 10-4-93 that the petitioner Mahesh was engaged as a coolie whenever the permanent sub-staff was on leave and as the panel on daily wager was not available for Mettupalayam branch. These two documents are found alongwith other documents however, they are not marked MW1, N. Ramasami was one among

the Officers served in the branch during the relevant time. The management had asked for his remarks under Ex. M. 15 and he gave a reply under Ex. M. 16 saying that the petitioner was engaged as a coolie. Further, MW1 has given a certificate marked as Ex. W-5. MW1 has explained by saying that since the petitioner wanted the certificate to get an employment in the Indian Overseas Bank, he had issued the Ex. W-5. Ex. W-5 cannot confer any right on the petitioner as his engagement was not in accordance with the procedure followed by the respondent management. Similar remarks were also called for from Shri Deena Dayalan who happened to be one of the senior managers during the relevant period vide the respondent's letter dated 29-3-93. Shri Deenadayalan gave reply that he engaged the petitioner between 12-4-88 to 27-5-88 as a coolie and on a consolidated payment of Rs. 25 per day. Though, the petitioner was engaged in the respondent bank, his name was neither in the panel nor he was a daily wage earner, but was engaged as a coolie as and when exigencies arose. The petitioner has failed to show that he was engaged for 240 days within 12 calendar months. The petitioner tried to show that the documents are with the respondent. However, when the petitioner makes a claim it was for him to prove that he was engaged for 240 days within 12 consecutive calendar months. However, in the case of the petitioner as he was only a coolie and not a daily wage earner and his name was not in the panel, his claim cannot be accepted.

8. One Sakthivel whose name was found in the marked as Ex. M. 2, was engaged in one of the vacant posts for sub-staff and as he had worked for number of years and that he had satisfied the qualifications laid down under Ex. M. 5, he was absorbed as sub-staff and subsequently transferred to Singanallur branch. Ex. M. 3 clearly shows his transfer to Singanallur branch. One Marudhan was posted as permanent sub-staff under Ex. M. 4 to Mettupalayam branch. The salary which has to be paid to the sub-staff will be announced by way of circulars to various branches. Ex. M. 6 to M. 14 are the various circulars showing the salary to be paid to the sub-staff. The petitioner was not paid the salary as per Exs. M. 6 to M. 14, the various circulars issued by the bank. But whereas it is clear from the evidence of MW1 that he was paid only a consolidated sum of Rs. 25 or Rs. 30 per day as a coolie and not as a daily wage earner. Therefore, even while engaging the petitioner, he was not taken as daily wage earner to qualify himself for the future appointment to the post of sub-staff. As his name was not found in the panel and he was appointed much against the directions given under Ex. M. 5, he cannot claim permanency. The petitioner when he was examined as WW1 before this Tribunal stated that he has raised this dispute for permanent job of sub-staff and he is not interested in joining the bank as a daily wage earner, or as

a coolie. However, when his engagement was not in accordance with directions given by the bank under Ex. M. 5, his claim cannot be accepted.

9. As his engagement was not in accordance with rules of the bank, and as he was taken as a coolie due to certain exigencies by showing the reason as he had worked for 240 days in 12 consecutive calendar months, he cannot claim the protection under Section 25F. He was engaged when there was vacancy and the engagement was not extended when there was no vacancy. As such, his non-engagement will not amount to retrenchment. In *Delhi Development Horticulture Employees Union Vs. Delhi Administration & Others* (1992 II LLJ P. 452) at page 458 and 459, Apex

“Those employed under the Scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme, and to claim on the basis of the said employment, a right to regularisation, is to frustrate the scheme itself. No Court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes, are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor, for whom the schemes are meant. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days has been leading. Although there is Employment Exchange Act, which required recruitment on the basis of registration in the employment exchange, it has become a common practice to ignore the Employment Exchange, and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered, with the Employment Exchange or who though registered or lower in the long waiting list in the Employment Exchange. The Courts can take judicial notice of this act that such employment is sought and given directly for various legal considerations including money. The employment is given first for temporary periods,



with technical breaks to circumvent, the relevant rules, and is continued for 240 or more days, with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such backdoor entry in the Employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospect."

From the above decision of our Apex Court, it is clear that merely by saying that the petitioner has worked for 240 days he cannot claim reinstatement, continuity of service and back wages. As already stated as his engagement was only as a coolie on certain exigencies, and he cannot claim reinstatement and other benefits. In *Prakash Cotton Mills (P) Ltd. Vs. The Rashtriya Mill Mazdoor Sangh* (1987 1 LLJ P. 97), Apex Court while deciding the Status of workmen held :

"Indeed, a Badli workman has no right to claim employment in place of any absent employees. In any particular case, if there be some jobs to be performed and the employee concerned is absent, the company may take in a Badli workman for the purpose. Badli workmen are really casual employees without any right to be employed. It has been rightly submitted by the learned counsel for the appellant that the Badli employees could not be said to have been deprived of any work to which they had any right and, consequently they are not entitled to any compensation for the closure."

What is applicable to Badli workers is equally applicable to the petitioner, who was engaged only as a coolie whose actual status was not ever like badli.

10. The petitioner claim reinstatement. As such there is no question of his reinstatement as his engagement was not as per the rules of the respondent bank but was engaged only as a coolie, whenever vacancy the question of reinstatement in *Shetty Vs. Bharat Nidhi Ltd.*, (1957 II LLJ P. 696) at page 702, held :

"Whatever the position in regard to the terms and conditions of the employment, thus vary in accordance with the terms of the award, the benefit of

reinstatement awarded to a workman cannot be treated as part of the contract between him and the employer. The effect of an order of reinstatement is merely to set at nought the order of wrongful dismissal of the workmen by the employer and to reinstate him in the service of the employer as if the contract of the employment originally entered into had been continuing. The terms and conditions of the contract which obtained when the workmen was in the employ of the employer prior to his wrongful dismissal which has been set aside continue to govern the relations between the parties and the workmen, continues in the employ of the employer under those terms and conditions. There is no variation of those terms and conditions of the contract. The only thing which happens is that workman is reinstated in his old service as before."

As the petitioner was engaged as a coolie in the vacancy and was paid consolidated wage and as his engagement was not in accordance with the rules of the bank his plea for reinstatement cannot be accepted.

From the foregoing discussions, it is clear that alleged termination of service of the petitioner H. Mahesh, was justified and he is not entitled to any relief.

In the result, award passed dismissing the claim of the petitioner. No costs.

Dated, this the 2nd day of April 1997.

S. THANGARAJ, Industrial Tribunal.

#### WITNESSES EXAMINED

For Workman :

W.W.1 THIRU B. MAHESH.

For Management :

M.W. 1 : Thiru N. Ramasamy.

#### DOCUMENTS MARKED

For Petitioner-workman :

Ex. W-1|27-6-89 : Credit Advice form (xerox copy)

W-2|26-3-81 : Xerox copy of 2A petition raised by petitioner.

W-3|18-7-91 : Counter filed by the respondent (xerox copy)

W-4|14-10-91 : Rejoinder filed by the petitioner (xerox copy)



W-5|7-12-90 : Xerox copy of Certificate issued to petitioner

W-6|5-4-90 : Letter from Senior Manager to Divisional Office, Coimbatore (xerox copy)

For Management :

Ex. M.1|17-5-88 : Xerox copy of S. B. Apc. No. 7236 of the petitioner.

M-2| : Xerox copy of Panel of daily wage list in Coimbatore Dt.

M-3|22-10-88 : Order of appointment issued to R. Sakthivel on probation (xerox copy)

M-4|28-9-89 : Order of transfer issued to S. R. Marutham from Cooroor to Mettupalam (xerox copy)

M-5|19-12-84 : Circular regarding Norms procedures for recruitment of sub-staff (xerox copy).

M-6|14-11-88 : Dearness allowance chart pertaining to Clerical and sub-staff (xerox copy)

M-7|11-2-89 : -do-

M-8|16-5-89 : -do-

M-9|12-8-89 : -do-

M-10|15-11-89 : -do-

M-11|1-12-89 : -do-

Ex. M.12|12-2-90 : Dearness allowance Chart pertaining to Clerical and Sub-Staff (xerox copy)

M-13|1-3-90 : -do-

M-14|11-5-90 : -do-

M-15|29-3-93 : Copy of letter issued to Mr. T. V. Narayanan regarding engagement of the petitioner as a coolie (xerox copy)

M-16|10-4-93 : Reply by Mr. T. V. Narayanan to Ex. M.15 (xerox copy).

नई दिल्ली, 13 अगस्त, 1997

का.आ. 2178.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-8-97 को प्राप्त हुआ था।

[संख्या एल-17011/7/90—आईआर (बी-II)]  
सनातन, ईस्क अधिकार

New Delhi, the 13th August, 1997

S.O. 2178.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 11-8-97.

[No. L-17011/7/90-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 71/90

AWARD

In the matter of dispute :

BETWEEN

Shri S. K. Kataria,  
Probationary Development Officer,  
WZ-758-B, Naraina,  
New Delhi-28.

Versus

Divisional Manager,  
Life Insurance Corporation of India,  
25, Kasturba Gandhi Marg,  
New Delhi.

APPEARANCES :

Shri S. K. Kataria in Person.

Shri Mohinder Singh —for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-17011/7/90-I.R. B-I dated 12-7-90 has referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of Life Insurance Corporation of India, New Delhi in terminating the services of Shri S. K. Kataria, Probationary Development Officer w.e.f. 1-4-89 is justified ? If not, to what relief the workman is entitled to ?”

2. The case was fixed for the evidence of the management when an application was filed by the management stating therein that the present reference could not proceed in view of the judgement of the Hon'ble Supreme Court in Civil

Appeal Case No. 235/93, titled H. R. Adyanthaya etc. Vs. Sandoz (India) Ltd. etc. etc. He was not a workman being a Development Officer.

3. Reply to this application was obtained from the workman. Arguments were heard.

4. The workman representative has urged that the Development Officer was a workman as was held in case S. K. Verma Versus Mahesh Chandra and another 1983 (3) S.C.R. 799. However, the management representative has referred to a judgment of full bench comprising of five Judges in H. R. Adyanthaya etc. etc. Vs. Sandoz (India) Ltd. etc. etc. in which it was held as follows :—

“As has been pointed out above, this decision did not refer to the earlier three decisions in May and Baker, WIMCO and Burmah Shell cases (Supra) and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in Burmah Shell case (Supra) by a coordinate Bench of three Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as per incuriam.”

5. In view of this situation the Development Officer of the Life Insurance Corporation is not a workman and this Court has got no jurisdiction to try this case and proceed further. The reference is answered accordingly. The aggrieved official can move for the redressal of his grievances to the Competent Court or Authority according to law. Parties shall bear their own costs.

5th August, 1997

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 13 अगस्त, 1997

का.आ. 2179.—औद्योगिक कविवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबंध में निदेशित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-8-97 को प्राप्त हुआ था।

[संख्या एल-17011/7/91-आईआर (बी-II)]  
सनातन, डेस्क अधिकारी

New Delhi, the 13th August, 1997

S.O. 2179.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 11-8-97.

[No. L-17011/7/91-IR(B-II)]  
SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 140/91

Shri V. B. Goel through  
Divisional Secretary,  
National Federation of Insurance Field,  
Workers of India,  
176/4, Thaper Nagar,  
Meerut-250002.

Versus

Senior Divisional Manager,  
Life Insurance Corporation of India,  
Prabhat Nagar,  
Meerut-250001.

APPEARANCES :

Shri Inder Lal Bhambri—for the workman.  
Shri Mohinder Singh—for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-17011/7/91-I.R.B.II dated Nil has referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of Life Insurance Corporation of India in effecting 3 decrements each from the salary of Shri V. B. Goel on the basis of his appraisal for the years 1983, 1984 and 1985 (Total 9 decrements) while he worked as a Development Officer with them, is justified ? If not, to what relief the workman is entitled ?”

2. The case was fixed for arguments when an application was filed by the management stating therein that the present reference could not proceed in view of the judgment of the Hon'ble Supreme Court in Civil Appeal case No. 235/93, titled H. R. Adyanthaya etc. Vs. Sandoz (India) Ltd. etc. etc. He was not a workman being a Development Officer.

3. Reply to this application was obtained from the workman. Arguments were heard.

4. The workman representative has urged that the Development Officer was a workman as was held in case S. K. Verma Versus Mahesh Chandra and another 1983 (3) S.C.R. 799. However, the management representative has referred to a judgement of full bench comprising of five Judges in H. R. Advanthaya etc. etc. Vs. Sandoz (India) Ltd. etc. etc. in which it was held as follows :—

“As has been pointed out above, this decision did not refer to the earlier three decisions in May & Baker, WIMCO and Burmah Shell cases (Supra) and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in Burmah Shell case (Supra) by a coordinate Bench of three-Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as per incuriam.”

5. In view of this situation the Development Officer of the Life Insurance Corporation is not a workman and this Court has got no jurisdiction to try this case and proceed further. The reference is answered accordingly. The aggrieved official can move for the redressal of his grievance to the Competent Court or Authority according to law. Parties shall bear their own costs.  
5th August, 1997

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 13 अगस्त, 1997

को.आ. 2180—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार सरकार औद्योगिक अधिनियम, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-8-97 को प्राप्त हुआ था।

[संख्या एल-17012/44/92-आईआर बी-2)]  
सनातन, डेस्क अधिकारी

New Delhi, the 13th August, 1997

S.O. 2180.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal.

New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of LIC of India and their workmen, which was received by the Central Government on 11-8-97.

[No. L-17012/44/92-IR (B-II)]  
SANATAN, Desk Officer

## ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI  
I.D. No. 12/93

In the matter of dispute :

## BETWEEN

Shri Ravinder Nath Rao,  
Probationary Development Officer,  
through Shri D. C. Rao,  
53, Shakhya Puri, Kankar Khera,  
Meerut Cantt.

Versus

Senior Divisional Manager,  
Life Insurance Corporation of India,  
Head Office, 113/2, Rajpur Road,  
Post Box No. 7, Dehradun-248001.

## APPEARANCES :

None—for the workman.

Mrs. Santosh Paul—for the management.

## AWARD

The Central Government in the Ministry of Labour vide its Order No. L-17012/44/92-I.R.B-2 dated 20-1-93 has referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of LTC in not confirming Shri Ravinder Nath Rao, Probationary Development Officer and terminating his services w.e.f. 4-11-90 is justified and legal ? If not to what relief is the workman entitled for ?”

2. The case was fixed for the evidence of the management when an application was filed by the management stating therein that the present reference could not proceed in view of the judgement of the Hon'ble Supreme Court in Civil Appeal case No. 235/93 titled H. R. Advanthaya etc. Vs. Sandoz (India) Ltd. etc. etc. He was not a workman being a Development Officer.

3. Reply to this application was obtained from the workman. Arguments were heard.

4. The workman representative has urged that the Development Officer was a workman as was held in case S. K. Verma Versus Mahesh Chandra and another 1983(3) S.C.R. 799. However, the management representative has referred to a judgment of full bench comprising of five Judges in H. R. Adyanthaya etc. etc. Vs. Sandoz (India) Ltd. etc. etc. in which it was held as follows :

“As has been pointed out above, this decision did not refer to the earlier three decisions in May & Baker, WIMCO and Burmah Shell cases (Supra) and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in Burmah Shell case (Supra) by a coordinate Bench of three-Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as per incuriam.”

5. In view of this situation the Development Officer of the Life Insurance Corporation is not a workman and this Court has got no jurisdiction to try this case and proceed further. The reference is answered accordingly. The aggrieved official can move for the redressal of his grievances to the Competent Court or Authority according to law. Parties shall bear their own costs.

5th August, 1997.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 13 अगस्त, 1997

का.आ. 2181—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-8-97 को प्राप्त हुआ था।

[संख्या एल-17012/45/90—आई आर (बी-II)]

सनातन, डेस्क अधिकारी

New Delhi, the 13th August, 1997

S.O. 2181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of LIC of India and their

workmen, which was received by the Central Government on 11-8-97.

[No. L-17012/45/90-IR(B-II)]

SANAIAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI  
INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 89/91

In the matter of dispute :

BETWEEN

Shri H. C. Midha,  
Opp. Radha Swami Satsang Bhawan,  
Nomesh Camp Road,  
Saharanpur-247001.

Versus

The Senior Divisional Manager,  
L.I.C. Saket, Meerut,  
2, Senior Branch Manager,  
L.I.C. I.B.O.-I,  
Ambala Road, Saharanpur.

APPEARANCES :

Shri Udai K. Midha—for the workman.

Shri Vijay Singh on behalf of Mohinder Singh—for the Management

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-17012/45/90-I.R. B-2 dated 26-7-91 has referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of Life Insurance Corporation in accepting the resignation of Shri H. C. Midha is justified ? If not to what relief is the workman entitled ?”

2. The case was fixed for the evidence of the management when an application was filed by the management stating therein that the present reference could not proceed in view of the judgment of the Hon'ble Supreme Court in Civil Appeal case No. 235/93 titled H. R. Adyanthaya etc. Vs. Sandoz (India) Ltd. etc. etc. He was not a workman being a Development Officer.

3. Reply of this application was obtained from the workman and arguments were heard.

4. The workman representative has urged that the Development Officer was a workman as was held in case S. K. Verma Versus Mahesh Chandra and another 1983 (3) S.C.R. 799. However, the management representative has referred to a judgment of full bench comprising of five Judges in H. R. Adyanthaya etc. etc. Vs. Sandoz (India) Ltd. etc. etc. in which it was held as follows :

As has been pointed out above, this decision did not refer to the earlier three decisions in May & Baker, WIMCO and Burmah Shell cases (Supra) and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in Burmah Shell case (Supra) by a coordinate Bench of three-Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as per incuriam."

5. In view of this situation the Development Officer of the Life Insurance Corporation is not a workman and this Court has got no jurisdiction to try this case and proceed further. The reference is answered accordingly. The aggrieved official can move for the redressal of his grievances to the Competent Court or Authority according to law. Parties shall bear their own costs.

5th August, 1997.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 13 अगस्त, 1997

का.आ. 2182:—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार; भारतीय जीवन बीमा निगम के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय केन्द्रीय सरकार को 11-8-97 को प्राप्त हुआ था।

[संख्या एल-17012/54/92-आई आर (बी -II)]  
सनातन, डेस्क अधिकारी

New Delhi, the 13th August, 1997

S.O. 2182.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of LIC of India and their workmen, which was received by the Central Government on 11-8-97.

[No. L-17012/54/92-IR(B-II)]  
SANATAN, Desk Officer

## ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 17/93

In the matter of dispute :

BETWEEN

Shri Brij Gopal,  
S/o Shri Ram Kirpal Singh,  
2134, Pragati Nagar,  
Meerut-250001.

Versus

Life Insurance Corporation of India,  
through the Senior Divisional Manager,  
Prabhat Nagar, Saket, Meerut.

APPEARANCES :

None—for the Workman  
Shri Mohinder Singh—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-17012/54/92-IR.B-2 dated 17-2-93 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Life Insurance Corporation of India, in not confirming Shri Brij Gopal, Probationary Development Officer and terminating his services w.c.f. 30-11-88 is justified and legal? If not, to what relief the workman is entitled to?"

2. The case was fixed for the evidence of the management when an application was filed by the management stating therein that the present reference could not proceed in view of the judgement of the Hon'ble Supreme Court in Civil Appeal case No. 235/93 titled H. R. Advanthaya etc. Vs. Sandoz (India) Ltd. etc. etc. He was not a workman being a Development Officer.

3. Reply of this application was obtained from the workman and arguments heard.

4. The workman representative has urged that the Development Officer was a workman as was held in case S. K. Verma Versus Mahesh Chandra and another 1983 (3) S.C.R. 799. However, the management representative has referred to a judgement of full bench comprising of five Judges in H. R. Advanthaya etc. etc. Vs. Sandoz (India) Ltd. etc. etc. in which it was held as follows :

"As has been pointed out above, this decision did not refer to the earlier three decisions in May & Baker, WIMCO and

Burmah Shell cases (Supra) and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in Burmah Shell case (Supra) by a coordinate Bench of three-Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as per incuriam."

5. In view of this situation the Development Officer of the Life Insurance Corporation is not a workman and this Court has got no jurisdiction to try this case and proceed further. The reference is answered accordingly. The aggrieved official can move for the redressal of his grievances to the Competent Court or Authority according to law. Parties shall bear their own costs.  
5th August, 1997

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 13 अगस्त, 1997

का.अ. 2183.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, भारतीय जीवन बीमा निगम के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के गंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-8-97 को प्राप्त हुआ था।

[संख्या एल-17012/103/90-आईआर (बी-II)]  
सनातन, डेस्क अधिकारी

New Delhi, the 13th August, 1997

S.O. 2183.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of LIC of India and their workmen, which was received by the Central Government on 11-8-97.

[No. L-17012/103/90-IR(B-II)]  
SANATAN, Desk Officer

### ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI  
I.D. No. 105/90

In the matter of dispute :

BETWEEN

Parvesh Kumar Gupta,  
S/o Shri Jai Bhagwan Gupta,  
H. No. 2057, Mohalla Mirkot,  
Khaleper, Saharanpur (U.P.).

Versus

M/s. Life Insurance Corporation of India,  
through the Senior Divisional Manager,  
Prabhat Nagar, Saket,  
Meerut (U.P.).

APPEARANCES :

Shri C. P. Aggarwal—for the Workman.  
None—for the Management.

### AWARD

The Central Government in the Ministry of Labour vide its Order No. L-17012/103/90-I.R. B-II, dated Nil has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Life Insurance Corporation of India in not confirming Shri Parvesh Kumar Gupta, Probationary Development Officer and terminating his services w.e.f. 7-10-89 is justified ? If not, to what relief the workman is entitled ?"

2. The case was fixed for argument when an application was filed by the management stating therein that the present reference could not proceed in view of the judgment of the Hon'ble Supreme Court in Civil Appeal Case No. 235/93, titled H. R. Adyanthaya etc. Vs. Sandoz (India) Ltd. etc. etc. He was not a workman being a Development Officer.

3. Reply of this application was obtained from the workman and arguments heard.

4. The workman representative has urged that the Development Officer was a workman as was held in case S. K. Verma Versus Mahesh Chandra and another 1983 (3) S.C.R. 799. However, the management representative has referred to a judgment of full bench comprising of five Judges in H. R. Adyanthaya etc. etc. Vs. Sandoz (India) Ltd. etc. etc. in which it was held as follows :

"As has been pointed out above, this decision did not refer to the earlier three decisions in May & Baker, WIMCO and Burmah Shell cases (Supra) and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis

was in terms considered and rejected in *Burmah Shell case (Supra)* by a coordinate Bench of three-Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as per incuriam."

5. In view of this situation the Development Officer of the Life Insurance Corporation is not a workman and this Court has got no jurisdiction to try this case and proceed further. The reference is answered accordingly. The aggrieved official can move for the redressal of his grievances to the Competent Court or Authority according to law. Parties shall bear their own costs.

5th August, 1997.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 13 अगस्त, 1997

का. आ. 2184.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, राश्ट्रीय जीवन बीमा निगम के प्रबंधकों के संबंध में निम्नलिखित और उनके कर्मचारियों के बीच अशुद्धि से निरूपित औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, नई दिल्ली के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-08-97 को प्राप्त हुआ था।

[संख्या एल-17012/138/90-आईआर (बी-II)]  
सनातन, डेस्क अधिकारी

New Delhi, the 13th August, 1997

S.O. 2184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on the 11th August, 1997.

[No. L-17012/138/90 IR(B-II)]  
SANATAN, Desk Officer.

#### ANNEXURE

BEFORE SHRI GANPATI SHARMA : PRESIDING OFFICER : CENTRAL GOVT. INDUSTRIAL TRIBUNAL : NEW DELHI

I.D. No. 30/91

In the matter of dispute between :

Shri K. C. Gupta s/o Shri Raghubir Sharan,  
83, Ansari Road, Muzaffarnagar-251001.

#### Versus

Senior Divisional Manager,  
Life Insurance Corporation of India,  
Prabhat Nagar, Meerut-251001.

#### APPEARANCES :

Shri Inder Lal Bhambri for the workman.  
Shri Mahender Singh for the Management.

#### AWARD

The Central Government in the Ministry of Labour vide its Order No. L-17012/138/90-I.R. (B-2) dated Nil has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the Management of Life Insurance Corporation in retiring Shri Krishna Chandra Gupta w.e.f. 5-6-1983 is justified. If not to what relief the workman is entitled?"

2. The case was fixed for the evidence of the management when an application was filed by the management stating therein that the present reference could not proceed in view of the judgment of the Hon'ble Supreme Court in Civil Appeal case No. 235/93 titled H. R. Adyanthaya etc. Vs. Sandoz (India) Ltd. etc. etc. He was not a workman being a Development Officer.

3. Reply to this application was obtained from the workman. Arguments were heard.

4. The workman representative has urged that the Development Officer was a workman as was held in case S. K. Verma Versus Mahesh Chandra & another 1983(3) S.C.R. 799. However, the management representative has referred to a judgment of full bench comprising of five judges in H. R. Adyanthaya etc. etc. vs. Sandoz (India) Ltd. etc. etc. in which it was held as follows :

"As has been pointed out above, this decision did not refer to the earlier three decisions in *May & Baker*, *WIMCO* and *Burmah Shell cases (Supra)* and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in *Burmah Shell case (supra)* by a coordinate Bench of three judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as per incuriam."

5. In view of this situation the Development Officer of the Life Insurance Corporation is not

a workman and this court has got no jurisdiction to try this case and proceed further. The reference is answered accordingly. The aggrieved official can move for the redressal of his grievances to the Competent Court or Authority according to law. Parties shall bear their own costs. 5th August, 1997.

GANPATI SHARMA, Presiding Officer.

नई दिल्ली, 11 अगस्त, 1997

का.आ. 2185—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में बी.सी.सी. एल. के प्रबंधन के संबंध निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-97 को प्राप्त हुआ था।

[सं. एल-20012/338/95-आईआर (सी-1)]  
ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 11th August, 1997

S.O. 2185.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, (No.-I) Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on the 8th August, 1997.

[No. L-20012/338/95-IR (C-I)]  
BRAJ MOHAN, Desk Officer.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1) (d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 108 of 1996

#### PARTIES :

Employers in relation to the management  
N. K. Area of M/s C.C. Ltd.

AND

Their Workmen

#### PRESENT :

Shri Tarkeshwar Prasad,

Presiding Officer.

#### APPEARANCES :

For the Employers : None.

For the Workmen : None.

STATE : Bihar

INDUSTRY : Coal

Dated, the 1st August, 1997.

#### AWARD

By Order No. L-20012/338/95-IR (Coal-I) dated 7-11-96 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the claim of the Union that the management had not allowed Shri Sukra Ganjhu on his duty w.e.f. 24-3-1993 is legal and justified? If so, to what relief is the workman entitled?”

2. The order of reference was received in this Tribunal on 26-11-96 and notices were issued to the parties for filing written statement by the workman. But no written statement has been filed on behalf of the workman despite registered notice sent to the sponsoring union. It, therefore, appears that neither the sponsoring union nor the concerned workman is interested to prosecute the present reference case.

3. Under such circumstances, I render a ‘no dispute’ award in the present reference case.

TARKESHWAR PRASAD, Presiding Officer.

नई दिल्ली, 11 अगस्त, 1997

का.आ. 2286—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में बी.सी.सी. एल. के प्रबंधन के संबंध निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-97 को प्राप्त हुआ था।

[सं. एल-20012/362/93-आईआर (सी-1)]  
ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 11th August, 1997

S.O. 2186.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s BCCL and their workman which was received by the Central Government on the 18th August, 1997.

[No. L-20012/362/93-IR (C-I)]  
BRAJ MOHAN, Desk Officer.



## ANNEXURE

नई दिल्ली, 13 अगस्त 1997

BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO. I, DHANBADIn the matter of a reference under section 10(1)  
(d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 257 of 1994

## Parties :

Employers in relation to the management of  
Loyabad Colliery of M/s. B.C.C. Ltd.,

## AND

Their Workmen

## PRESENT :

Shri Tarkeshwar Prasad,  
Presiding Officer.

## APPEARANCES :

For the Employers : Shri H. Nath, Advocate.  
For the Workmen : None.

State : Bihar.

Industry : Coal.

Dated, the 1st August, 1997.

## AWARD

By Order No. L-20012(362)/93-I.R. (Coal-1) dated 9-11-94 the Central Govt. in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Loyabad Colliery of BCCL in not referring Shri Nagina Dusadh to Apex Medical Board for assessment of his age is justified? If not, to what relief the workman is entitled?"

2. The order of reference was received in this Tribunal on 14-11-94. After notice the parties filed their respective written statements and thereafter the workman stopped appearing before this Tribunal to take further step. Despite registered notice issued to the sponsoring union neither the concerned workman nor the sponsoring union appeared to take any step in this case. It, therefore, appears that neither the concerned workman nor the sponsoring union is interested to prosecute the present reference case.

3. In such circumstances I render a 'no dispute' award in the reference case.

TARKESHWAR PRASAD, Presiding Officer.

का.अ. 2187--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भौ. सी. सी. एल. के प्रबंधन के मध्य नियोजकों और उनके कर्मचारों के बीच, अगुध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण (नं. 1) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार की 12-8-97 को प्राप्त हुआ था।

[स. एन.-20012/73/88-डा. 40/आईआर (सी-I)]  
ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 13th August, 1997

S.O. 2187.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. CCL and their workman, which was received by the Central Government on the 12-8-1997.

[No. L-20012/73/88-D4(A)/IR(C-I)]  
BRAJ MOHAN, Desk Officer

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO. 1, DHANBADIn the matter of a reference under section  
10(1)(d)(2A) of the Industrial Disputes Act,  
1947.

Reference No. 48 of 1989

## PARTIES :

Employers in relation to the management of  
Kuju Area of M/s. C.C. Ltd.

## AND

Their Workmen.

## PRESENT :

Shri Tarkeshwar Prasad,  
Presiding Officer.

## APPEARANCES :

For the Employers : Shri R. S. Murthy,  
Advocate.

For the Workmen : Shri B. Joshi, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated, the 4th August, 1997

### AWARD

By Order No. L-20012(73)/88-D-4(A)-I.R. (Coal-I) dated the 5th May, 1989 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the supersession on various occasions since 1975 of Shri Hari Narain Prasad a Gr. II Clerk under G. M. Kuju Area of M/s. C.C. Ltd., P.O. Kuju, Dist. Hazaribagh by his juniors is justified? If not, to what relief the workman is entitled?”

2. The workman and the sponsoring Union appeared and filed written statement therein that the workman was appointed as Grade-II Clerk at Ara Colliery in May, 1968 during private management and at the time of take over of the colliery he was Grade-II Clerk of the same colliery with effect from 31-1-1973 and on the date of nationalisation on 1-5-1973 screening was done in April, 1973 and appointment of the concerned workman was shown as 8-4-1973. He also participated in organising peaceful demonstration against National Emergency imposed in the country in the year 1975 and was detained in jail custody from 14-10-75 under the provision of Defence of India Rules. He was a trade unionist and was instrumental in raising several disputes on behalf of the workmen and after arrest his service was terminated by the management vide letter dated 1-11-1975. It is further said that after withdrawal of the emergency the Central Government directed the management to reinstate all the workmen whose services were terminated on account of protests against emergency and detention under D.I.R. and vide letter dated 8-4-77 the management gave fresh appointment to the concerned workman and later the management modified this letter and vide letter dated 12-5-77 he was reinstated in service with continuity of service. After his reinstatement his seniority in Grade-II Clerk was taken into account from 1968 and from 31-1-73 without effecting any break in service.

3. It is further said that after sometime a false F.I.R. was lodged against the workman relating to theft of explosive for which chargesheet was issued by the management dated 31-7-80 and perfunctory departmental enquiry was held and was dismissed from service with effect from 3-12-80. A reference was made thereafter and as per award of the Central Government Industrial Tribunal No. 2, Dhanbad, dismissal was set aside vide award dated 20-7-83 in Reference No. 88 of 1982 and he was reinstated in service with full back wages and continuity of service and as such there was no break in service.

4. It is further said that seniority of the workman in Clerical Gr. II ought to have been computed from the date of his appointment in Gr. II and the period of his termination in 1977 and his dismissal in the year 1980 should not have been considered as break in service. As there was no communication of any adverse comment in the C.C.R. of the concerned workman, it should be conclusively presumed that C.C.R. could not be the stumbling block for promotion from Clerical Gr. II to Gr. I which is done on the basis of seniority subject to satisfactory C.C.R. and no written or oral test is held by the D.P.C. for consideration of merit of a candidate. It is further said that the period of eligibility for promotion from direct Gr. II to Gr. I Clerk is only three years and as per this rule the other clerks holding junior posts at the time of Nationalisation have been successively promoted to Clerical Gr. I, Special Grade and Supervisory Grade whereas the concerned workman was denied promotion and was stagnated for more than 16 years in Clerical Gr. II due to victimisation and discriminatory action of the management.

5. It is further said that some other co-workers as Gr. II also junior to the workman were promoted from Gr. II to Gr. I with effect from 9-2-76 and at that time the concerned workman was suffering from economic hardship due to his termination of service and he was not promoted after his reinstatement on his original job. Again promotion from Clerical Gr. I to Senior Grade by order dated 25-11-82 was given and further promotion was given by order dated 8/9-5-87 and the management was adamant not to give promotion to the concerned workman by using all sorts of malpractices. It is said that the action of the management in superseding the concerned workman is illegal and unjustified and as such it is prayed that award be passed in his favour by allowing promotions to the workman in Clerical Grade-I w.e.f. 9-2-76, in Special Grade w.e.f. 25-11-82 and in Supervisory Grade 'A' w.e.f. 9-5-87 with all back wages and difference of wages from 9-2-76 onwards.

6. The management appeared and filed written statement stating, inter-alia, that the reference was not maintainable and it is said that promotion is the sole function of the management and no workman can claim as way of right. It is further said that the claim of the workman is over-stale and the reference is likely to be struck down on this ground. It is further said that the concerned workman was not entitled for consideration of promotion in the year 1975 and no one was promoted belonging to the same cadre in the year 1975. It is further said that promotion depends on the basis of selection depending on the merit of the employee and their eligibility for consideration for such selection based on experience in a post and their performance, conduct etc. It is said that the claim of the workman and sponsoring union is that he

should have been promoted on the basis of his seniority and there is no such rule of promotion before the management.

7. It is said that the workman was placed in the post of Clerk Gr. II w.e.f. 8-4-73 and it is further said that the workman was not found suitable for promotion and therefore he had no right to claim promotion or relief as claimed. It is also said that the management cannot be ordered to give promotion to the workman only on the basis of seniority alone and the claim of the workman and sponsoring union is untenable and unjustified and he is not entitled for any relief as claimed.

8. By way of rejoinder to the written statement of the workman the same has been denied specifically and parawise. It is also said that the workman cannot be permitted to complain against the management on account of promotions of some other workmen when he was out of employment. It is finally said that the workman is not entitled for any relief as claimed.

9. I further find that the workman has also filed rejoinder to the written statement of the management denying the contention of the management specifically and parawise and the same is said to be incorrect and denied.

10. On the basis of pleadings of the parties, the points for consideration in this reference are—

- (a) Whether supersession of the workman, Clerk Gr. II on various occasions since 1975 by his juniors is justified?
- (b) If not, what relief or reliefs the workman is entitled to?

11. Both the points are inter-linked and as such are taken together for their consideration.

12. I find that the management has examined only one witness, MW-1—Juman Khan—who is Special Grade Clerk of Ara Colliery and has said that he had joined in the year 1970 under Contractor and he knew the workman who was working prior to nationalisation and after nationalisation both of them were taken to service and were posted as Clerk Gr. II and they were regularised on 1-4-73 and were further confirmed on 19-11-73. He was promoted to Clerk Gr. II on 9-2-76 and written test was held for promotion and oral interview was also held. Again he was promoted in 1982 as Special Grade Clerk and seniority-cum-C.R. merit is considered in C.R. promotion upto Clerk Gr. I is done on collierywise and after that it is done areawise. He could not say as to when the concerned workman was promoted as Clerk Gr. I and written test and oral interview was held in the year 1976 for which general information was given by the management. But he had not informed the lawyer of the management about such written test

and oral test held for promotion in Clerk Gr. I. However, he admitted that promotion is done as per cadre scheme. He has denied that as per cadre scheme promotion to selection grade is given on the basis of D.P.C. and no written test or oral test is taken for the post. He has denied that he was adducing falsely at the instance of the management.

13. The workman has examined himself as WW-1 and has tried to support his case as given in written statement. He has stated that he was working as Clerk Gr. II in Ara Colliery and he was victimised by the management for trade union activities and was dismissed from service and also arrested under D.I.R. during emergency period. He was reinstated in service on 8-7-77. He was active member of the union of C.P.I. and again he was dismissed in the year 1980 for which he filed a case and was reinstated in service in the year 1982. He has further stated that on 9-2-76 some other workers were promoted from Clerk Gr. II who were junior to him and list of such clerks is given as Ext. W-6. Again on 27-11-82 from Clerk Gr. I to Special Grade promotion was given to other workers who were junior to him and list of such workers is given in Ext. W-6/1. Thereafter some other workers were promoted to Office Superintendent Gr. I who were junior to him and such list has been filed. However, he has been promoted from Gr. II to Gr. I in the year 1992 and he was not promoted alongwith other workers properly and he was victimised every time and he was denied for promotion from due date like other co-workers. In cross-examination he has stated that prior to nationalisation he was working as Clerk Gr. II and not as contractor's worker and after nationalisation of the colliery screening of the workers were held not only for the contractor's workers but also for the company's workers. He has further stated that he filed petition before the management in the year 1975 when no promotion was given to him with other workers but he has got no copy of such petition to support this fact. However, he has admitted that promotion for the first time from Clerk Gr. II to Gr. I was given in February, 1976 and as he was member of C.P.I. he was arrested under D.I.R. but there was no paper to show that he was member of C.P.I. He has denied that he was arrested under D.I.R. for criminal activities. He has further admitted that he was dismissed on the allegation of theft of explosive of the colliery and on 9-2-76 when promotion was made to Clerk Gr. I from Clerk Gr. II he was not in service and again in the year 1982 when promotion from Gr. I to Special Grade was given he was not in service. He has further admitted that he reinstated in service in the year 1977 and since then he has not claimed for promotion. He has further admitted that after his dismissal second time when he raised the dispute under I.D. Act and reference was made to the Tribunal he has not claimed for any promotion.

14. He has further denied the suggestion that seniority is considered between two or more workers of the same grade and not that of different grades. However, he has admitted that when some other workers were promoted to Gr. I and again to Special Grade and again Office Superintendent Gr. I at that time he was in junior grade. He has denied that list for such promotion given to other workers and none of them were junior to him. He has admitted that after his reinstatement in service he was given promotion in the year 1992.

15. He has further stated that after his reinstatement in service and prior to his promotion in 1992, promotion to two co-workers were given in 1991, namely, Guptajee and A. K. Mukherjee and full name Gupta he could not say. He could not say the date of appointment of both the co-workers in Grade-II and that it is not mentioned in his written statement. He has denied that he adduced falsely that S/Sri Gupta and Mukherjee were promoted in the year 1991 and also denied that his claim was baseless and unjustified. He has further stated that after his dismissal the dispute under Industrial Disputes Act was raised and the sponsoring union was R.C.M.S. affiliated to INTUC which is not union of C.P.I. It is further stated that after his reinstatement on the basis of the award passed by Tribunal he filed petition for promotion the management but no such paper has not been filed in this case. He has denied that no such petition was filed by him before the management.

16. The workman has filed some documents which have been exhibited and Ext. W-1 is copy of letter dated 22-11-80 addressed to Jhuman Khan, Ext. W-2 is copy of order dated 1-11-75 dismissal letter of the workman, Ext. W-3 is copy of corrigendum dated 12-5-77, Ext. W-4 is Notification of award alongwith copy of award in Ref. No. 88 of 1982 passed by the Central Government Industrial Tribunal No. 2, Dhanbad, Ext. W-5 is copy of Office Order dated 4/5-2-82 relating to promotion and other promotion letters, and Ext. W-6 is list of workmen promoted by the management.

17. The management has also filed some documents which are Ext. M-1 copy of Service Book of Sri Govind Prasad, Ext. M-2 copy of Service Book of Sri Devendra Mahato and Ext. M-3 is copy of Service Book of Sri Suresh Pd. Gupta. No other document has been submitted by the management.

18. While arguing the case it has been submitted on behalf of the management that it is well settled principle that allowing promotion to the workman is the sole function of the management and on this point there are a number of authorities of the Hon'ble Supreme Court. Similarly it is over-

stale nature of dispute and demand of the union and on this point also there are number of authorities. It is further said that the workman went to jail on 14-10-75 and admittedly his service was terminated with effect from 1-11-75. Thereafter he was reinstated in service from 8-4-77 as per direction of the Central Government and he was again dismissed from service with effect from 3-12-1980 being involved in a case of theft of explosives and as per award of the Central Government Industrial Tribunal No. 2, Dhanbad passed in Reference No. 88 of 1982 he was reinstated in service with effect from 20-7-83 and this demand of the workman and the union that as there was continuity in service in the reinstatement order so there should not be break in service in the year 1977 and his dismissal in the year 1980 and in view of the matter promotion was given to Clerical Gr. I, Special Grade and Supervisory Grade even juniors of the workman as on 9-12-76 and also on 25-11-82 and further on 9-5-87. It is further said that the allegation of the union and the workman for promotion in the year 1975 is totally baseless and no such person was given promotion in that year. It is further said that as per copy of the award, Ext. W-4 the workman was reinstated in service due to political pressure and in that reference also there is no plea of promotion nor any direction was given by the Tribunal allowing promotion. It is further said that it is admitted case that in the year 1976 and 1982 when promotion to other co-workers were given from Gr. II to Gr. I or to Special Grade, admittedly the workman was not in service. As such there was no question of giving promotion to him. But the demand of the union and the workman that after reinstatement in both times his case ought to have been considered or promotion as that of other co-workers has also got no claim as not only seniority but efficiency and merit and entry in C.C.R. were also considered and this might have been done in the case of the workman and he would not have been found fit and moreover he was not in service in the year 1976 and 1982, so there was no question of considering his case for promotion. Thereafter when vacancy arose he was promoted in the year 1992 as Clerk Gr. I as vacancy arose thereon. It is finally said that there is no merit at all in the case of the workman and the action of the management in not allowing promotion as claimed by the workman from the year 1976 onwards was fully justified.

19. On the other hand, it has been submitted on behalf of the workman that the workman was intentionally and arbitrarily superseded by the management by juniors who were promotions in the year 1976 and 1982. It is further submitted that admittedly as per evidence of MW-1 the workman was taken over as Grade-II Clerk with effect from 31-1-73 and were regularised w.e.f. 1-4-73, but on 9-7-76 and in the year 1982 when promotion to his juniors was allowed no such promo-

tion was effected to the workman although he was entitled for the same and no adverse entry was ever communicated to him by the management. The further contention is that it has been introduced by the management for the first time that written test and oral test were held for promotion from Gr. II to Gr. I but there is nothing to show on record that any such examination was ever held and this is out of imagination of the management. It is further said that as per documents filed by the workman specially copy of judgement, Ext. W-4 and Ext. W-5 copy of promotion order given by the management to other co-workers it is clear that as per award in Reference No. 88 of 1982 of Central Government Industrial Tribunal No. 2, Dhanbad passed in the year 1983 continuity of service was to be maintained as if there was no dismissal of the workman from service in the year 1980 and as per order of the Central Government when he was reinstated there was no interruption of the service of the workman and in view of the matter when there was continuity of service vide order of the Central Government and as per award of the Central Government Industrial Tribunal No. 2, Dhanbad, there was no case of any breakage of service of the workman and when juniors to him were considered for promotion to the higher grade naturally he too ought to have been given promoted likewise and not by doing so this is clear arbitrary and discriminatory action of the management and he was superseded in service by juniors by wilful action of the management. It is also submitted that as he was active member of C.P.I. so he was discriminated by the management. However, it was pointed out on behalf of the management that the sponsoring union of the workman is R.C.M.S. which is naturally not union of C.P.I. However, it is clear that against the award passed by the Central Government Industrial Tribunal No. 2, Dhanbad in Reference No. 88 of 1982 in the year 1983 admittedly the management had not challenged the same award before the Hon'ble High Court, Patna in a writ petition and admittedly it was implemented by the management later on. Naturally when the said award vide Ext. W-4 was implemented by the management so there was no question of any breakage of service of the workman and if the workman was not in service at the time of promotion given to juniors in the year 1976 and 1982 certainly after 1983 passing of the award vide Ext. W-4 all along there was continuity of service of the workman and non-consideration of the case of the workman for promotion to higher post after 1983 passing of the award certainly the action of the management cannot be justified in any way and the workman was discriminated by the arbitrary action of the management in denying promotion to him to Clerical Grade-I and Selection Grade thereafter. As such it is clear that this action of the management cannot be justified and supersession of the workman at several times after 1976 onwards and denying promotion to him by the

management cannot be justified and he was entitled for the same as nothing adverse was ever communicated to him.

20. After going through the case record, evidence both oral and documentary and considering the plea taken by the parties, I find much force in the plea taken on behalf of the workman that after passing of the award dated 20-7-83 by the Central Government Industrial Tribunal No. 2, Dhanbad, in Reference No. 88 of 1982 (Ext. W-4) no writ was filed by the management against this award and the award was implemented by the management so his case for promotion should have been considered by the management from 1983 onwards on all such dates when promotion to such co-workers were given as Clerical Gr. I. The promotion given to the workman for the first time in the year 1992 in Clerical Grade-I is nothing but face saving decision taken by the management to show that he has been promoted. When the dispute under I.D. Act was raised before the A.L.C.(C), Dhanbad in the year 1988 itself and this reference is of the year 1989 and after lapse of so many years the workman was given first promotion admittedly in the year 1992. As such it is clear that the action of the management for not considering candidature of the workman for consideration since 1976 onwards certainly is not valid and justified and the workman is entitled for the relief as claimed. Both the points are decided in favour of the workman.

21. Hence, award—

The supersession on various occasions since 1975 of Shri Hari Narain Prasad a Gr. II Clerk under G. M. Kuju Area of M/s. C.C. Ltd., P.O. Kuju, Dist. Hazaribagh by his juniors is not justified. The management is directed to consider the candidature of the workman for promotion from 1983 onwards i.e. after passing of the award dated 20-7-1983 in Reference No. 88 of 1982 (Ext. W-4) by the Central Government Industrial Tribunal No. 2, Dhanbad which has been admittedly acted upon by the management and the workman should be considered for promotion on all such dates subsequent to July, 1983 for his promotion to higher grade as claimed. The management is further directed to act accordingly within two months from the date of publication of the award in Gazette of India.

However, there will be no order as to costs.

TARKESHWAR PRASAD, Presiding Officer

नई दिल्ली, 13 अगस्त, 1997

का.आ. 2188.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार में, बी.पी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अन्वंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2), धनबाद के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-8-97 को प्राप्त हुआ था।

[नं. एल-20040/97/95-आईआर (सी-1)]  
ब्राज मोहन, डेस्क अधिकारी

New Delhi, the 13th August, 1997

S.O. 2188.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BPCL and their workman, which was received by the Central Government on 12-8-97.

[No. L-20040/97/95-IR(C-I)]  
BRAJ MOHAN, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

#### PRESENT :

Shri S. B. Panse, Presiding Officer  
Reference No. CGIT-2/18 of 1996  
Employers in relation to the Management of  
Bharat Petroleum Corporation Ltd.

AND

Their Workmen

#### APPEARANCE :

For the Employer—Mr. R. S. Pai, Advocate  
For the Workmen—Ms. Kunda N. Samant,  
Advocate  
Mumbai, dated 31st July, 1997

#### AWARD—PART-II

On 17-3-97 by Part-I Award I came to the conclusion that the inquiry which was held against the workman was as per the Principles of Natural Justice and the findings of the inquiry officer are not perverse.

2. Thereafter the matter was posted for hearing. The workman Vijay Nanaji Shinde (Ex.-26) lead

evidence. The management filed a purshis Ex.-28 that it does not propose to lead any oral evidence in the matter.

3. On adjourned dates it was submitted that the matter is likely to be compromised.

4. Today the parties have filed a purshis which can be said to be a settlement between the parties relating to the reference. They agreed the contentions in the settlement (Ex.-30), which was read over and recorded. In view of that settlement I pass the following order :

#### ORDER

The reference is disposed off in terms of settlement Exhibit-30 :

1. On consideration of a request made by the workman for an amicable settlement and without prejudice to the contentions of the Corporation in its written statement, the Corporation agrees to pay a lumpsum amount of Rs. 1,50,000 (Rupees One Lakh Fifty Thousand Only) in full and final settlement of all his claims against the Corporation including any claim for reinstatement or re-employment, gratuity, retrenchment compensation, wages, leave wages, bonus etc.
2. The workman agrees to accept the amount of Rs. 1,50,000 (Rupees One Lakh Fifty Thousand Only) in full and final settlement of all his claims against the Corporation including any claim for reinstatement or re-employment, gratuity, retrenchment compensation, wages, leave wages, bonus etc.
3. In view of Clause 1 and 2 above, the workman agrees not to press the above Reference.
4. The Corporation will pay the aforesaid amount of Rs. 1,50,000 (Rupees One Lakh Fifty Thousand Only) within two weeks from today by cheque.
5. The Reference be disposed off as settled as per these consent terms.

S. B. PANSE, Presiding Officer

नई दिल्ली, 13 अगस्त, 1997

का.आ. 2189.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार में, एच.पी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अन्वंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2)

मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-8-97 को प्राप्त हुआ था।

[सं. एल-30012/7/92-आईआर (सी-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 13th August, 1997

S.O. 2189.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 2), Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. HPCL and their workman, which was received by the Central Government on the 12th August, 1997.

[No. L-30012/7/92-IR(C-1)]

BRAJ MOHAN, Desk Officer

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/42 of 1993

Employers in relation to the management of  
Hindustan Petroleum Corporation Ltd.

AND

Their workmen.

APPEARANCES :

For the Employer—Shri S. K. Talsania &  
Shri V. H. Kantharia, Advocates.

For the Workmen—Shri P. M. Pradhan, Ad-  
vocate.

Mumbai, dated 22nd July, 1997

#### AWARD—PART-III

By earlier awards I came to the conclusion that the domestic enquiry which was held against the workman was as per the Principles of Natural Justice, but the findings of the inquiry officer are perverse. It is therefore, the management was given an opportunity to lead evidence to substantiate its action.

2. In short the workmen M. R. Natu and P. V. Dhuri joined the Hindustan Petroleum Corporation Limited as a skilled category Assistant Process technicians. On 10th March, 1986 they were on duty for C.B.F.S. loading operation in O.M.&S. area in the shift of 8.00 a.m. to 4.00 p.m. In that shift truck bearing No. NCU 1913 was loaded with C.B.F.S. The quantity was 10.250 kgs. Later on

the company was informed by the police that the truck was checked and it was found that it was loaded with substantial amount of excess C.B.F.S. After investigation it was traced out that the entries were endorsed by the workmen and the weigh slip indicated the aforesaid quantity of 10.250 kgs. The billing was made on that quantity. In the result the company sustained substantial loss on the part of the worker.

3. These workmen were given a charge-sheet dated 10th July, 1986 for violation of standing order No. 28(9) and 28(17) namely fraud and dishonesty in connection with company's business and willfull falsification of the record of the company respectively.

4. Now the issues that fall for my consideration and my findings thereon are as follows :

Issues	Findings
1. Whether the action of the management of H.P.C.L. in terminating the service of Shri P. V. Dhuri and M. N. Nattu w.e.f. 9th April, 1991 is legal and justified ?	No.
2. To what relief both the workmen are entitled to ? As per order.	

#### REASONS

5. After the opportunity was given to the management to lead evidence and justify its action it examined one Digeesh Kumar Agrawal (Ex-17) who is the Senior Manager (Operations), which is on the point of the procedure followed by the Corporation in respect of filling of CBFS in the tank trucks. He affirmed that :

- The tank truck when comes to the gate of Mumbai Refinery for filling up CBFS, the authorisation slip to lead the CBFS product is issued by Mahul terminal (Marketing location) produced by the driver at Weigh Bridge for weighment.
- Thereafter only one tank truck at a time would be allowed to come to weigh bridge for Tare weight. The weigh bridge was manually operated. The tare weight of the truck is recorded in the weighment slip and also in the Weigh Bridge register.
- The truck then proceeds to loading area. The driver of the truck loads the CBFS product in the truck. After loading the truck comes back to the weigh bridge.

Once again the truck is weighed and the gross weight is recorded in the Weighment slip and Weigh Bridge Register. Recording and counter signature of tare weight in weighment slip is done by Weigh Bridge operator. However, the operations are witnessed and counter-signed by weigh bridge supervisor in weighment slip.

- (d) Thereafter the driver/cleaner proceeds to the gate pass window for gate pass preparation. Gate pass is prepared by a clerk/technician and signed by the supervisor after verifying that all the details in the weighment slip and gate pass are correctly recorded. Thereafter truck proceeds to gate for security checks before leaving the refinery.

6. In the cross-examination he states that the tanks are filled up by the driver or the cleaner. The technicians take the weight. Both these workers were working as technicians at the relevant time. He does not know what is the security check which is taken place at the gate. His work was to see that the entire work for the shift runs smoothly. Before leaving for the loading there is a weigh bridge for tare weight and after loading the same weigh bridge is used for gross weight. Cleaner and driver take the gate pass. If any excess is traced out near the gate then the technicians or anybody who is responsible for it is caught for filling excess. There is no way to find out the excess quantity at the gate. He further affirms that if the truck is having excess oil or the quantity it is now allowed to pass the gate. The police did not record his statement when they investigated the matter. From the testimony of this witness it cannot be said that the charges which were levelled against the workmen are proved. The management did not examine any other witness.

7. Mr. Talsania, the Learned advocate for the management argued that the charges levelled against the workmen can be held to be proved on the basis of the statement made by Dhuri one of the workmen concerned in the reference before the police Inspector Khilari. That statement is on pages 53 and 58 of the compilation of the documents filed by the management. In that statement Dhuri has clearly admitted that on 10th March, 1986 not only NCU 1913 was filled with excess quantity of CBFS by about ten tonne but other two trucks bearing No. NCU 1812 and NCU 4711 were also filled with excess quantity of CBFS by 7.5 tonnes and 6 tonnes respectively. He further submitted that it is now well settled position in law that the statement made by the delinquent before the police authority may not be admissible in evidence before the Court of law but can definitely be taken into account in disciplinary proceedings since strict

rules of Evidence Act do not apply to the domestic inquiry. To substantiate this contention he placed reliance on *Kuldeep Singh Vs. State of Punjab* and *Ors.* J.T. 1996 (A) S.C. 491.

8. In the above stated authority *Kuldeep Singh* the appellant was charge-sheeted under Terrorist and Disruptive Activities Act. His statement was recorded by the police wherein he admitted that he is mixed up with extremists and had been found responsible for supplying information relating to the police department. Their Lordships observed that it is true that the confession or admission of guilt made by person executed of an offence before or while in custody of police officer is not admissible in court of law according to section 25 and 26 Evidence Act but it is well settled that these rules of evidence do not apply to departmental enquiries wherein the only test is compliance with the principles of natural justice and of course compliance with the rules governing the enquiries if any. It is further observed that if the appellants confession is relevant and the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry it would perhaps be permissible for authorities to prove that the appellant did make such a confession/admission during the course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true he may well be entitled to act upon the said statement. In that case the appellant was acquitted by the designated court. It can be seen that the statement which was recorded by the Police was under the Terrorists and Disruptive Activities Act which itself is of value in the eye of law. It can be safely relied upon. Therefore the facts in that case are different from the facts before me.

9. Dhuri the workman did depose that, that statement was made under compulsion. No doubt Khilari the investigating officer deposed that the statement which was made by Dhuri was not under undue influence. There is no other corroborative piece of evidence on the record to corroborate that statement/confession.

10. There cannot be any dispute that in a domestic enquiry strict and sophisticated rules of evidence under the Evidence Act do not apply. In the words of Justice Krishna Iyer there is no allergy to hearsay evidence provided it has a reasonable nexus and credibility. The same view has been reiterated by the Supreme Court in *J. D. Jain Vs. Management, State Bank of India* AIR 1982 SC 673. Here in this case the finding of the inquiry officer is solely based on the confessional statement of Dhuri.



There is no other circumstantial evidence against the delinquent. In *Central Bank of India vs. P. C. Jain* AIR 1969 SC 765 the Supreme Court clearly indicated that the domestic tribunal will not be justified in recording its findings on the basis of hear say evidence without having any direct or circumstantial evidence in support of its finding. The Constitution Bench in *Jagannath Prasad Sharma's case* clearly lays down that though a Tribunal dealing with domestic enquiry is not bound with normal rules relating to procedure and evidence it cannot base its findings on evidence which is purely hear say because to do so in an enquiry of this nature would be contrary to the rules of equity and natural justice.

11. In fact when I decided Issue No. 2 on 26th November, 1990 I had discussed the evidence which was before the enquiry officer. Nothing new material is brought on the record to justify the action taken by the management.

12. So far as Natu the workman is concerned he had not made any confessional statement before the police. It is tried to argue on behalf of the management that relying on the confessional statement of Dhuri the charges against Natu are said to be proved. I do not find any merit in it. I therefore find that the charges which were levelled against the workmen were not proved. Naturally the action of their termination from service is not legal and justified.

13. At the time of argument it was noticed that even though the workmen were present in the court they were not cross-examined by the management and a pursuis was filed that there is no evidence on behalf of the workmen and the management examined their witnesses. Mr. Pradhan, the Learned Advocate for the workmen submitted that they are ready to give the workmen for further cross examination as their affidavits are already on record. On adjourned date Dhuri (Ex-9) did not remain present for offering himself for further cross examination. He did not affirm that after the termination he is not gainfully employed. So far as Natu (Ex-10) is concerned he made himself available for cross-examination. He affirmed that he did not know anything regarding Dhuri's case. He states there are six members in his family and from March, 1992 he works at Bardillya Chemicals Ltd. and gets Rs. 6,000 per month. He is a plant operator there.

14. There is no statement of Dhuri that he made any attempt to obtain alternative employment and could not get one. So far as Natu is concerned he is gainfully employed as observed above. In *India Engineering Works Bombay Pvt. Ltd. Vs. Presiding Officer Fifth Labour Court and Ors.* 1995

II CLR 890 Their Lordships observed that dismissed workman owes a duty to the Industrial adjudicature to honestly disclose full particulars of the fact which are purely within his knowledge and that any attempt to mislead the tribunal must surely be looked as askance. His Lordships observed that he is unable to accept that because the responsibility of proving gainful employment has been cast on the Employer the workman has no duty or responsibility to explain anything in this behalf before the Tribunal adjudicating the Industrial Dispute.

15. The Company in the written argument (Ex 20) mentioned that there is no evidence of workman attempting to get employment and that he is not gainfully employed. It appears to be correct so far as Dhuri is concerned. He did not file any application to inform the Tribunal regarding his inability to appear on adjourned date. The reason might be that as he is gainfully employed he does not want to loose that days casual leave and to attend the court. He might be prosecuting this reference only to remove the stigma on him and nothing more. His conduct shows that he wants to conceal material facts from the Tribunal. Under such circumstances Dhuri will not be entitled for any back wages, but so far as Natu is concerned he is entitled to back wages from 9th April, 1991 till February, 1992 in which period he was unemployed and for the rest of the period he will not be entitled to back wages as he is gainfully employed.

16. Mr. Talsania, the Learned Advocate for the management submitted that if the Tribunal comes to the conclusion that the charges levelled against the workmen are not proved to the satisfaction of the Tribunal then Tribunal may not grant relief of reinstatement to the worker because the workmen are holding the position of trust and it is not possible for the management to repose any confidence in the workmen. In that case the direction for payment of reasonable compensation to these workmen may suffice the purpose. The Learned Advocate for the workmen did not agree for the same. The management submitted that in the case of *Yeshwant Rodhkar* who was the Dy. Manager (Acting) of the H.P.C.L. filed writ petition No 2304 of 1994 wherein Their Lordships in the similar circumstances granted that relief. It is not in dispute that the Hindustan Petroleum Corporation Limited has preferred an appeal against that order. Further more the petitioner in that writ petition was the Dy. Manager (Acting) and here the workmen are in different capacity. Under such circumstances the position of *Yeshwant Rodhkar* cannot be equalled with that of these workmen. In the result I record my findings on the points accordingly and pass the following order :

## ORDER

## AND

1. The action of the management of Hindustan Petroleum Corporation Limited, in terminating the services of Pratap Vishnu Dhuri and Mahesh Ramchandra Natu w.e.f. 9th April, 1991 is not legal and justified.
2. The management is directed to reinstate the workmen.
3. Pratap Dhuri is not entitled to any monetary reliefs.
4. The management is directed to pay all wages to Mahesh Natu from 9th April, 1991 to February, 1992.
5. The management is further directed to treat these workmen in continuous service and give them all other benefits which are not given in paragraph 3 and 4 of the order.

S. B. PANSE, Presiding Officer

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2190.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबन्धन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[संख्या एल-22012/412/95-आई.आर. (सी-11)]

एस. रविश अली, डेस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on 4-8-1997.

[No. L-22012/412/95-IR (C-II)]  
S. RAVISH ALI, Desk Officer

## ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT  
HYDERABAD

## PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated, 26th day of June, 1997

Industrial Dispute No. 57 of 1996

## BETWEEN

G. Nagireddy Ex. Casual Labour, Modern Rice Mill,  
FCI, Sathenapalli, Guntur District, A.P.-522001  
..Petitioner

The Sr. Regional Manager,  
Food Corporation of India, Regional  
Office, Hyderabad-500001 ..Respondent

## APPEARANCES :

Sri Ch. Laxminarayana, Advocate—for the Petitioner.

Sri B. G. Ravinder Reddy, Advocate—for the Respondent.

## AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/412/95-IR (C-II) dated 18-4-1996 referred the following dispute under Section 10(1)(d) and 2-A of Industrial Disputes Act, 1947 for adjudication :

"Whether Sri G. Nagireddy was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur Distt. during the period of 6 years from 1975-81 ? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1(4)/85 Vol. II dated 6-5-87 and EP-1 (3)/91 Vol. II dated 24-8-92 is legal and justified ? If not what relief the workman is entitled to ?"

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the 'Petitioner' filed a claim statement contending as follows :

The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However, the Corporation selected one Mr. Subbayya as Muttah Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dated 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-Corporation issued another circular dated 24-8-92 calling for the particulars of casual labours etc. But the respondent Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, reemployed the services of other workers by name Dayamma, Yogamma and Rehmat Khatam who worked along with the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows :

The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid

the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Kehmat Khatan were engaged for sweeping etc. and their services were regularise. The petitioner cannot compare himself with them. The Modern Rice Mill Sathenapalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as WW-1 and filed Exs. W-1 to W-5. The then Manager of Modern Rice Mill is examined as WW-1 and the Clerk in the Office of the Dist. Manager, F.C.I., Guntur is examined as MW-2. They filed Exs. M-1 to M-17.

5. The points for consideration are :

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sathenapalli owned by the Food Corporation of India from 1975 to 1981 ?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified ?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified ?
- (4) The claim of the petitioner is barred by Res judicata ?

6. Point No. 1—The admitted facts of the case are as follows :

The Food Corporation of India constructed a Rice Mill at Sathenapalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the bar boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M-1 Notice dated 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M-2 letter dated 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Muttah Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7 The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows :

MW-1 deposed to the method of granting contract and payment of amount to the contractors as follows :

"The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullaipudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao .....

So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me."

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the Dist. Manager of F.C.I. Even in the Bills Exs. M-3 and M-4 (Xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Muttah Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W-1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though MW-1 conveniently pleads the ignorance as to whether he wrote Ex. W-2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W-2 letter was signed by him. He has noted therein that the petitioner and others are Muttah workers. Ex. W-3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are mutta workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W-4 letter dated 13-9-77. MW-1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediatory. It is as follows :

"The third list containing names 1 to 30 commencing from Mullaipudi Subbaiah to Kesemchettu Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Muttah Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Muttah Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H and T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Muttah Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M-3 or Ex. M-4 bills. We can see from the Certificate of concerned Officer appended to Exs. M-3 and

**M-4 bill that Subbayya is only Mutta Maistry or Headman.**  
The concerned Officer's certificate reads as follows :

"Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M-6 letter dated 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mohideen Sahib and Sons Vs. United Didi Workers' Union Salem and another [1964 (2) LLJ 633] that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. Point No. 2—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. Point No. 3—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dated 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. Point No. 4—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M-10 order dated 31-7-78 dismissing the claim of the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in

- (1) State of Assam and Another Vs. Bhagya Rajagopal Chari (1972 SLR 44 Page 414).
- (2) Bombay Gas Co. Ltd Vs. Jagannath Pandurang and others [1975 (31) FLR Page 166 (SC)] and
- (3) The Punjab Co-op. Bank Ltd. Vs. R. S. Bhatia (Dead) through L. R.S. [1975 (31) FLR Page 326 (SC)].

I, therefore held that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-3-92 and sold away in 1996 or so. The FCI is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply

to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefit as per the Circular No. EP-i (4)/85 Vol. II dated 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal

#### Appendix of evidence

Witness examined for the petitioner :

WW-1—G. Nagireddy.

Witness examined for the

Respondent :

MW-1—K. Sudhalara Rao

MW-2—K. Venkateswarlu.

#### Documents marked for the Petitioner

- Ex. W-1—Xerox copy of the statement showing the Attendance particulars.
- Ex. W-2—Xerox copy of the confidential letter dated 24-4-78 to Dist. Manager, FCI, by MW-1.
- Ex. W-3—Xerox copy of the letter dated 16-12-77 addressed to the Dist. Manager, FCI, Guntur.
- Ex. W-4—Xerox copy of the Lr. dated 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.
- Ex. W-5—Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent

- Ex. M-1—Xerox copy of the Tender Notice dated 6-12-73.
- Ex. M-2—Xerox copy of the order dated 5-4-74 to D. V. Subba Rao.
- Ex. M-3—Xerox copy of the Bill submitted by M. Subbayya.
- Ex. M-4—Xerox copies of the Bills submitted by M. Subbayya.
- Ex. M-5—Xerox copy of the letter dated 4-1-80 issued by the Provident Fund Commissioner.
- Ex. M-6—Xerox copy of the letter dated 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.
- Ex. M-7—Xerox copy of the proceedings dated 16-9-81 under Section 7-A of Employees Provident Fund Act.
- Ex. M-8—Xerox copy of the letter dated 14-10-81 by the Sr. Regional Manager to Dist. Manager, FCI, Guntur.
- Ex. M-9—Xerox copy of the letter dated 5-11-81 to the Regional P.F. Commissioner.
- Ex. M-10—Order dated 31-7-73 of the Authority under Payment of Wages Act (Xerox copy).
- Ex. M-11—Letter dated 2-5-86 by the Personnel Manager (Xerox copy).
- Ex. M-12—Xerox copy of letter dated 6-5-87 by the Personnel Manager.
- Ex. M-13—Xerox copy of Lr. dated 24-8-92 by the Executive Director.
- Ex. M-14—Xerox copy of order dated 29-6-88 of Hon'ble High Court in WP No. 11963/81.

- Ex. M-15—Xerox copy of order dated 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.
- Ex. M-16—Xerox copy of letter dated 25-10-75 to the Regional Manager.
- Ex. M-17—Xerox copy of letter dated 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2191:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[संख्या-एल-22012/411/95-आई आर (सी-II)]

एस रविश अली, डेस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2191.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on 4-8-1997.

[No. L-22012/411/95-IR (C-II)]  
S. RAVISH ALI, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

#### PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I,  
Dated, 26th day of June, 1997  
Industrial Dispute No. 58 of 1996

#### BETWEEN

V. Vasudeva Rao Ex. Casual Labour,  
Modern Rice Mill, FCI, Sathenapalli,  
Guntur District, A.P.-522001 .. Petitioner

#### AND

The Sr. Regional Manager,  
Food Corporation of India, Regional  
Office, Hyderabad-500001 .. Respondent

#### APPEARANCES :

Sri Ch. Iaxminarayana, Advocate—for the Petitioner.  
Sri B. G. Ravinder Reddy, Advocate—for the Respondent.

#### AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/411/95-IR (C-II) dated 18-4-96 referred the following dispute under Sections 10(1)(d) and 2-A of Industrial Disputes Act, 1947 for adjudication :

"Whether Sri V. Vasudeva Rao was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur Dist. during the period of 6 years from 1975—81 ? If so whether the action of the management of FCI

Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1 (4)/85 Vol. II dated 6-5-87 and EP-1 (3)/91 Vol. II dated 24-8-92 is legal and justified ? If not what relief the workman is entitled to ?"

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the 'Petitioner' filed a claim statement contending as follows :

The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the Officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr. Subbayya as Muttah Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dated 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-Corporation issued another circular dated 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yegamma and Rehmat Khatam who worked along with the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per that the circulars of the respondent.

3. The respondent filed a counter contending as follows :

The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yegamma and Rehmat Khatam were engaged for sweeping etc. and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sathenapalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as WW-1 and filed Exs. W-1 to W-5. The then Unit Manager of Modern Rice Mill is examined as MW-1 and the Clerk in the Office of the Dist. Manager, F.C.I. Guntur is examined as MW-2. They filed Exs. M-1 to M-17.

5. The points for consideration are :

(1) Whether the petitioner was employed in the Modern Rice Mill, Sathenapalli owned by the Food Corporation of India from 1975 to 1981 ?

- (2) Whether the action of the management in terminating the services of the workman in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?
- (4) The claim of the petitioner is barred by Res judicata.

6. Point No. 1—The admitted facts of the case are as follows :

The Food Corporation of India constructed a Rice Mill at Sathenpalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M-1 Notices dated 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M-2 letter dated 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows :

MW-1 deposed to the method of granting contract and payment of amount to the contractors as follows :

"The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullaipudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao ... ..

So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me."

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the Dist. Manager of F.C.I. Even in the Bills Exs. M-3 and M-4 (Xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W-1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though MW-1 conveniently pleads the ignorance as to whether he wrote Ex. W-2 letter or not, taking advantage of the fact that it is a Xerox copy, it can be easily seen that Ex. W-2 letter was signed by him. He has noted therein that the petitioner and others are Mutta workers. Ex. W-3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are mutta workers who have completed 180 days work for the purpose of coverage under the Employees' Provident Fund Act. The same was repeated in Ex. W-4 letter dated 13-9-77. MW-1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

"The third list containing names 1 to 30 commencing from Mullaipudi Subbaiah to Kasemchettiv Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Mutta Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor absconded from 15-8-1975, H and T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M-3 or Ex. M-4 bills. We can see from the Certificate of concerned Officer appended to Exs. M-3 and M-4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's certificate reads as follows :

"Certified that the bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M-6 letter dated 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working along with other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mehideen Sahib and Sons Vs. United Bidi Workers' Union Salem and another [1964 (2) L.J. 633] that when the intermediary is found to be man of innecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent Corporation and not contract labour.

10. Point No. 2—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the

petitioner who was adirect employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. Point No. 3.—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dated 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. Point No. 4.—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M-10 order dated 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res-Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forum. It is so held in

- (1) State of Assam and another Vs. Raghava Rajagopalachari (1972 SLR 44 Page 414)
- (2) Bombay Gas Co. Ltd. Vs. Jagannath Pandurang and others [1975 (31) FLR Page 166 (SC)] and
- (3) The Punjab Co-op. Bank Ltd. Vs. R. S. Bhatia (Died) through L.Rs. [1975 (31) FLR page 326 (SC)].

I, therefore hold that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EF-1(4)/85 Vol. II dated 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

#### Appendix of evidence

Witnesses examined for the

petitioner :

WW-1—V. Vasudeva Rao.

Witnesses examined for the

Respondent :

MW-1—K. Sudhakara Rao

MW-2—K. Venkateswarlu.

#### Documents marked for the Petitioner

- Ex. W-1—Xerox copy of the statement showing the Attendance particulars.
- Ex. W-2—Xerox copy of the confidential letter dated 24-4-78 to Dist. Manager, FCI, by MW-1.
- Ex. W-3—Xerox copy of the letter dated 16-12-77 addressed to the Dist. Manager, FCI, Guntur.
- Ex. W-4—Xerox copy of the Lr. dated 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.
- Ex. W-5—Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent

- Ex. M-1—Xerox copy of the Tender Notice dated 6-12-73.
- Ex. M-2—Xerox copy of the order dated 5-4-74 to D. V. Subba Rao.
- Ex. M-3—Xerox copy of the Bill submitted by M. Subbayya.
- Ex. M-4—Xerox copies of the Bills submitted by M. Subbayya.
- Ex. M-5—Xerox copy of the letter dated 4-1-80 issued by the Provident Fund Commissioner.
- Ex. M-6—Xerox copy of the letter dated 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.
- Ex. M-7—Xerox copy of the proceedings dated 16-9-81 under Section 7-A of Employees Provident Fund Act.
- Ex. M-8—Xerox copy of the letter dated 14-10-81 by the Sr. Regional Manager to Dist. Manager, FCI, Guntur.
- Ex. M-9—Xerox copy of the letter dated 5-11-81 to the Regional P. F. Commissioner.
- Ex. M-10—Order dated 31-7-78 of the Authority under Payment of Wages Act (Xerox copy).
- Ex. M-11—Letter dated 2-5-86 by the Personnel Manager (Xerox copy).
- Ex. M-12—Xerox copy of letter dated 6-5-87 by the Personnel Manager.
- Ex. M-13—Xerox copy of Lr. dated 24-8-92 by the Executive Director.
- Ex. M-14—Xerox copy of order dated 29-6-88 of Hon'ble High Court in WP No. 11963/84.
- Ex. M-15—Xerox copy of order dated 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.
- Ex. M-16—Xerox copy of letter dated 25-10-75 to the Regional Manager.
- Ex. M-17—Xerox copy of letter dated 28-7-75 to all the SRMS by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2192.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबंध में निम्नलिखित और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंथपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[संख्या एल-22012/410/95-आई आर (सी-II)]

एम. रविश अली, डेप्ट. अधिकारी



New Delhi, the 6th August, 1997

S.O. 2192.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on 4-8-97.

[No. L-22012/410/95-IR (C-II)]

S. RAVISH ALI, Desk Officer

### ANNEXURE

### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

#### PRESENT:

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated, 26th day of June, 1997

Industrial Dispute No. 52 of 1996

#### BETWEEN

M. Dakshinachari Ex. Casual Labour,  
Modern Rice Mill, FCI, Sathenapalli,  
Guntur District, A.P.-522001.

..Petitioner.

#### AND

The Sr. Regional Manager,  
Food Corporation of India, Regional  
Office, Hyderabad-500001.

..Respondent.

#### APPEARANCES:

Sri Ch. Laxminarayana, Advocate for the Petitioner.

Sri B. G. Ravinder Reddy, Advocate for the Respondent.

#### AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/410/95-IR(C-II) dated, 18-4-96 referred the following dispute under Sections 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication:

"Whether Shri M. Dakshinachari was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur District during the period of 6 years from 1975—81? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1(4)/85 Vol. II dated 6-5-87 and EP-1(3)/91 Vol. II dated 24-8-92 is legal and justified? If not, what relief the workman is entitled to?"

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the 'Petitioner' filed a claim statement contending as follows: The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr. Subbayya as Mutta Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lump-sum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dated 6-5-87 for regularising the services of casual employees who have put in three months

of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dated 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yogamma and Rehmat Khatam who worked alongwith the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows: The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the godowns was entrusted to Mr. Subbayya a Mutta Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Mutta Maistry, in 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rehmat Khatam were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sattenapalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W. 1 and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W. 1 and the Clerk in the Office of the District Manager, F.C.I., Guntur is examined as M.W. 2. They filed Exs. M1 to M17.

5. The points for consideration are:

- (1) Whether the petitioner was employer in the Modern Rice Mill, Sattenapalli owned by the Food Corporation of India from 1975 to 1981?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?
- (4) The claim of the petitioner is barred by Res judicata

6. Point No. 1.—The admitted facts of the case are as follows: The Food Corporation of India constructed a Rice Mill at Sattenapalli in the first instance and the Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, leading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dated 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M2 letter dated 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarded the handling and transporting work on contract basis. On 6th August, 1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.



7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows: M.W. 1 deposed to the method of granting contract and payment of amount to the contractors as follows:

"The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were hung tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao. .... So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me."

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the District Manager of F.C.I. Even in the Bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W. 1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Mutta workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are Mutta workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W4 letter dated 13-9-77. M.W. 1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows:

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Mutta Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H & T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Mutta Maistry or Headman.

The concerned Officer's certificate reads as follows:

Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M6 letter dt. 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mohideen Sahib & Sons vs. United BMD Workers' Union Salem & another (1964) (2) LLJ 633 that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. Point No. 2.—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. Point No. 3.—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dt. 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. Point No. 4.—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dt. 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res. Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of Payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in —

- (1) State of Assam & another vs. Raghava Rajagopalachari (1972 SLR 44 Page 414).
- (2) Bombay Gas CC. Ltd. Vs. Jagannath Pandurang & others [1975 (31) FLR Page 166(SC)] and
- (3) The Punjab Co-op. Bank Ltd. vs. R. S. Bhatia (DIED) through L.R.S. [1975 (31) FLR Page 326 (SC)].

I, therefore hold that the claim is barred by Res. Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the even of the principle of Res. judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res. judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No EP-1(4)/85 Vol. II dt. 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res. judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I, Hyderabad

#### Appendix of evidence

Witness examined for  
the petitioner :

WW1.—Sakshinachari.

Witnesses examined for the

Respondent :

M.W.1—K. Sudhakara Rao.

M.W.2—K. Venkateswarlu.

#### Documents marked for the Petitioner

- Ex. W1—Xerox copy of the statement showing the Attendance particulars.
- Ex. W2—Xerox copy of the confidential letter dt. 24-4-87 to Dist. Manager, FCI, by M.W.1.
- Ex. W3—Xerox copy of the letter dt. 16-12-77 addressed to the Dist. Manager, FCI, Guntur.
- Ex. W4—Xerox copy of the Lr. dt. 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.
- Ex. W5—Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent

- Ex. M1—Xerox copy of the Tender Notice dt. 6-12-73.
- Ex. M2—Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.
- Ex. M3—Xerox copy of the Bill submitted by M. Subbayya.
- Ex. M4—Xerox copies of the Bills submitted by M. Subbayya.
- Ex. M5—Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.
- Ex. M6—Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.
- Ex. M7—Xerox copy of the proceedings dt. 16-9-81 under Sec. 7A of Employees Provident Fund Act.
- Ex. M8—Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Dist. Manager, FCI, Guntur.
- Ex. M9—Xerox copy of the letter dt. 5-11-81 to the Regional P.F. Commissioner.

- Ex. M10—Order dt. 31-7-78 of the Authority under Payment of Wages Act (xerox copy).
- Ex. M11—Letter dt. 2-5-86 by the Personnel Manager (xerox copy).
- Ex. M12—Xerox copy of the letter dt. 6-5-87 by the Personnel Manager.
- Ex. M13—Xerox copy of Lr. dt. 24-8-92 by the Executive Director.
- Ex. M14—Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.
- Ex. M15—Xerox copy of the order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.
- Ex. M16—Xerox copy of letter dt. 25-10-75 to the Regl. Manager.
- Ex. M17—Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2193—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबन्धतन्त्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[संख्या एस-22012/406/95-आई आर (सी-II)]

एस. रविश अली, ईस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2193—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on the 4-8-97.

[No. L-22012/406/95-IR(C-II)]

S. RAVISH ALI, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Present :

Sri V. V. Raghavan, B.A., I.L.B., Industrial Tribunal-I.

Dated : 26th day of June, 1997

INDUSTRIAL DISPUTE NO. 59 OF 1996

#### BETWEEN

V. Thirupalu Ex. Casual Labour,  
Modern Rice Mill, FCI, Sathenapalli,  
Guntur District, A.P., 522 001 .. Petitioner

#### AND

The Sr. Regional Manager,  
Food Corporation of India, Regional  
Office, Hyderabad-500 001 .. Respondent

Appearances :

Sri Ch. Laxminarayana, Advocate for the Petitioner.  
Sri B. G. Ravinder Reddy, Advocate for the Respondent.

## AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/406/95-IR(C-II) dated 18-4-96 referred the following Dispute under Section 10(1)(d) & 2A of Industrial Disputes Act, 1947 for adjudication :

"Whether Sri V. Thirupalu was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur Distt. during the period of 6 years from 1975-81 ? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1(4)/85 Vol. II dt. 6-5-87 and EP-1(3)/91 Vol. II dated 24-8-92 is legal and justified ? If not what relief the workman is entitled to ?

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the 'Petitioner' filed a claim statement contending as follows : The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr. Subbayya as Mutta Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dt. 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dt. 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yoramma and Rehmat Khatam who worked alongwith the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows : The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbayya a Mutta Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Mutta Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yoramma and Rohmat Khatam were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sathenapalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W.1 and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W.1 and the Clerk in the Office of the Distt. Manager, F.C.I., Guntur is examined as M.W.2. They filed Exs. M1 to M17.

5. The points for consideration are :

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sattenpalli owned by the Food Corporation of India from 1975 to 1981 ?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified ?
- (4) The claim of the petitioner is barred by Res judicata ?

6. POINT NO. 1 :—The admitted facts of the case are as follows : The Food Corporation of India constructed a Rice Mill at Sattenpalli in the first instance and the Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stocks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dt. 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M2 letter dt. 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows : M.W.1 deposed to the method of granting contract and payment of amount to the contractor as follows :

"The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D.V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao. So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me."

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly the Distt. Manager of F.C.I. Even in the Bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W.1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Mutta workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are Mutta workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W4 letter dt. 13-9-77. M.W. 1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Mutta Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H & T Work is now directly handled in the above matter."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Mutta Maistry or Headman.

The concerned Officer's certificate reads as follows :

"Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M6 letter dt. 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mohideen Sahib & Sons vs. United Ridi Workers' Union Salem and Another (1964) (2) LIT 632 that when the intermediary is found to be man of innumerable means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I held that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. POINT NO. 2 :—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. POINT NO. 3 :—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dt. 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. POINT NO. 4 :—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dt. 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :

- (1) State of Assam & Another vs. Raghava Rajagopalachari (1972 SLR 44 Page 414).
- (2) Bombay Gas Co. Ltd. Vs. Jagannath Pandurang and Others [1975 (31) FLR Page 166 (SC)] and
- (3) The Punjab Co-op. Bank Ltd. vs. R. S. Bhatia (Died) Throughout LRS. [1975 (31) FLR Page 326 (SC)].

I, therefore held that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefit as per the Circular No. EP-1(4)/85 Vol. II dt. 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res Judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

#### Appendix of evidence

Witness examined for

the petitioner

WW1 : V. Thirupalu

Witness examined for

the Respondent

M.W.1 : K. Sudhakara Rao

M.W.2 : K. Venkateswarlu

Documents marked for the Petitioner

Ex. W1 : Xerox copy of the statement showing the Attendance particulars.

Ex. W2 : Xerox copy of the confidential letter dt. 24-4-78 to Distt. Manager, FCI, by M.W.1.

Ex. W3 : Xerox copy of the letter dt. 16-12-77 addressed to the Distt. Manager, FCI, Guntur.

Ex. W4 : Xerox copy of the Lr. dt. 13-9-77 addressed to the Distt. Manager, enclosing the list of names of 73 regular employees etc.

Ex. W5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

Documents marked for the Respondent.

Ex. M1 : Xerox copy of the Tender Notice dt. 6-12-73.

Ex. M2 : Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.

Ex. M3 : Xerox copy of the Bill submitted by M. Subbayya.

Ex. M4 : Xerox copies of the Bills submitted by M. Subbayya.

Ex. M5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.

Ex. M6 : Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Distt. Manager, FCI, Guntur.

Ex. M7 : Xerox copy of the proceedings dt. 16-9-81 under Sec. 7A of Employees Provident Fund Act.

Ex. M8 : Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Distt. Manager, FCI, Guntur.

Ex. M9 : Xerox copy of the letter dt. 5-11-81 to the Regional P. F. Commissioner.

Ex. M10 : Order dt. 31-7-78 of the Authority under Payment of Wages Act (xerox copy).

Ex. M11 : Letter dt. 2-5-86 by the Personnel Manager (xerox copy).

Ex. M12 : Xerox copy of letter dt. 6-5-87 by the Personnel Manager.

Ex. M13 : Xerox copy of Lr. dt. 24-8-92 by the Executive Director.

Ex. M14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.

Ex. M15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.

Ex. M16 : Xerox copy of letter dt. 25-10-75 to the Regl. Manager.

Ex. M17 : Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2194.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[संख्या एल-22012/405/95-आई आर (सी-II)]

एस. रविश अली, डेस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2194.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which

was received by the Central Government on 4-8-1997.

[No. L-22012/405/95-IR(C-II)]

S. RAVISH ALI, Desk Officer

## ANNEXURE

### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

#### PRESENT :

Shri V. V. Raghavan, B.A., LL.B., Industrial Tribunal—I.

Hyderabad, the 26th June, 1997

Industrial Dispute No. 51 of 1996

#### BETWEEN

K. Sourylu Ex. Casual Labour, Modern Rice Mill, FCI, Sathenapalli, Guntur District, A.P., 522 001 ..PETITIONER

#### AND

The Sr. Regional Manager, Food Corporation of India, Regional Office, Hyderabad—500 001. ..RESPONDENT.

#### APPEARANCES :

Shri B. G. Ravinder Reddy, Advocate for the petitioner.

Shri B. G. Ravinder Reddy, Advocate for the Respondent.

#### AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/405/95-IR (C. II), dated 18-4-1996 referred the following Dispute under Sections 10(1)(d) and 2-A of Industrial Disputes Act, 1947 for adjudication :—

“Whether Shri K. Sourylu was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur District during the period of 6 years from 1975-81 ? If so, whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular Nos. EF-1 (4)/85, Vol. II, dated 6-5-1987 and EP-1(3)/91, Vol. II, dated 24-8-1992 is legal and justified ? If not what relief the workman is entitled to ?”

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the “Petitioner” filed a claim statement contending as follows : The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The

contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However, the Corporation selected one Mr. Subbayya as Mutta Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lump sum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dated 6-5-1987 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-Corporation issued another circular dated 24-8-1992 calling for the particulars of casual labours, etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however regularised the services of other workers, by name Dayamma, Yogamma and Rehmat Khatam who worked alongwith the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows : The petitioner was never employed directly by the respondent-corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the food-grains was entrusted to Mr. Subbayya a Mutta Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Mutta Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rehmat Khatam were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sathenapalli is not in existence and it is closed long back. The claim of the petitioner is a state claim. Hence, the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W. 1 and filed Exs. W-1 to W-5. The then Unit Manager of Modern Rice Mill is examined as M.W. 1 and the Clerk in the Office of the District Manager, F.C.I., Guntur is examined as M.W. 2. They filed Exs. M-1 to M-17.

5. The points for consideration are :

(1) Whether the petitioner was employed in the Modern Rice Mill Sathenapalli owned

by the Food Corporation of India from 1975 to 1981 ?

- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified ?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified ?
- (4) The claim of the petitioner is barred by Res judicata ?

6. POINT NO. 1 :—The admitted facts of the case are as follows : The Food Corporation of India constructed a Rice Mill at Sathenapalli in the first instance and their Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which mean taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M-1 Notice dated 6-12-1973. Shri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-1974 to 9-4-1976 by Ex. M-2 letter dated 5-4-1974. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Shri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclosed that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows : M.W. 1 deposed to the method of granting contract and payment of amount to the contractors as follows :

“The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time.

The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D. D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao. . . . . So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me".

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the District Manager of F.C.I. Even in the Bills Exs. M-3 and M-4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence disclosed that he was only set up as Contractor. Ex. W-1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W. 1 conveniently pleads the ignorance as to whether he wrote Ex. W-2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W-2 letter was signed by him. He has noted therein that the petitioner and others are Mutta workers. Ex. W-3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are Mutta workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W-4 letter dated 13-9-1977. M.W. 1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations

performed by these labourers and present bills. The F.C.I. will pay the amount to Mutta Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H & T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M-3 or Ex. M-4 bills. We can see from the Certificate of concerned Officer appended to Exs. M-3 and M-4 bill that Subbayya is only Mutta Maistry or Headmen. The concerned officer's certificate reads as follows :

"Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M-6 letter dated 13-5-1981 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. DEWAN MOHIDEEN SAHIB and SONS vs. UNITED BIDI WORKER'S UNION SALEM and ANOTHER (1964) (2) LLJ. 633 that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-corporation and not contract labour.

10. POINT No. 2.—Though the respondent-corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-1981 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. POINT No. 3.—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dated 6-5-1987 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. POINT No. 4.—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that



they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M-10 order dated 31-7-1978 dismissing the respondent argued that this order operates as Res Judicata workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide, whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :—

- (1) STATE OF ASSAM AND ANOTHER Vs. RAGHAVA RAJAGOPALACHARI (1972 SLR 44 Page 414).
- (2) BOMBAY GAS CO. LTD. Vs. JAGAN-NATH PANDURANG AND OTHERS 1975 (31) FLR PAGE 166 (SC) and
- (3) THE PUNJAB CO-OP. BANK LTD Vs. R. S. BHATIA (DIED) THROUGH L. RS. 11975 (31) FLR PAGE 326 (SC)1.

I, therefore held that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res. Judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-I(4)85 Vol. II dt. 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

### Appendix of evidence

Witness examined for the Petitioner	Witness examined for the Respondent
WW1 : K. Sourylu	M.W.1 : K. Sudhakara Rao
	M.W. 2 : K. Venkates- warlu

#### Documents marked for the Petitioner

- Ex. W1 : Xerox copy of the statement showing the Attendance particulars.
- Ex. W2 : Xerox copy of the confidential letter dt. 24-4-78 to Dist. Manager, FCI, by M.W. 1.
- Ex. W3 : Xerox copy of the letter dt. 16-12-77 addressed to the Dist. Manager, FCI, Guntur.
- Ex. W4 : Xerox copy of the Lr. dt. 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.
- Ex. W5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent

- Ex. M1 : Xerox copy of the Tender Notice dt. 6-12-73.
- Ex. M2 : Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.
- Ex. M3 : Xerox copy of the Bill submitted by M. Subbayya.
- Ex. M4 : Xerox copies of the Bills submitted by M. Subbayya.
- Ex. M5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.
- Ex. M6 : Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.
- Ex. M7 : Xerox copy of the proceedings dt. 16-9-81 under Section 7A of Employees Provident Fund Act.
- Ex. M8 : Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Dist. Manager, FCI, Guntur.
- Ex. M9 : Xerox copy of the letter dt. 5-11-81 to the Regional P. F. Commissioner.
- Ex. M10 : Order dt. 31-7-78 of the Authority under Payment of Wages Act (Xerox copy).



- Ex. M11 : Letter dt. 2-5-86 by the Personnel Manager (Xerox copy).
- Ex. M12 : Xerox copy of letter dt. 6-5-87 by the Personnel Manager.
- Ex. M13 : Xerox copy of letter dt. 24-8-92 by the Executive Director.
- Ex. M14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.
- Ex. M15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.
- Ex. M16 : Xerox copy of letter dt. 25-10-75 to the Regl. Manager.
- Ex. M17 : Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 6 अगस्त, 1997

का आ 2195:—आद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट आद्योगिक विवाद में, आद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[संख्या एल.-22012/404/95-आई आर (सी-II)]

एस० रविश अली, डेस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2195.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on 4-8-97.

[No. L-22012/404/95-IR (C.II)]

S. RAVISH ALI, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

#### PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.  
Dated, 26th day of June, 1997  
Industrial Dispute No. 50 of 1996

#### BETWEEN

B. Peddanna, Ex. Casual Labour,  
Modern Rice Mill, FCI, Sathenapalli,  
Guntur District. A.P. 522001.

.. Petitioner.

#### AND

The Sr. Regional Manager,  
Food Corporation of India, Regional  
Office, Hyderabad-500001.

.. Respondent.

#### APPEARANCES :

Sri Ch. Laxminarayana, Advocate for the Petitioner.

Sri B. G. Ravinder Reddy, Advocate for the Respondent.

#### AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/404/95-IR(C.II) dated 12-4-96 referred the following Dispute under Sections 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication :

"Whether Shri B. Peddanna was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur District during the period of 6 years from 1975—81? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1(4)/85 Vol. II dated 6-5-87 and EF-1(3)/91 Vol. II dated 24-8-92 is legal and justified? If not what relief the workman is entitled to?"

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the 'Petitioner' filed a claim statement contending as follows: The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr. Subbayya as Muttah Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lump-sum from the Management and distribute among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labour which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dated 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dated 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yogamma and Rahmat Khatun who worked alongwith the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows: The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rahmat Khatun were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sathenapalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W. 1 and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W. 1 and the Clerk in the Office of the District Manager, F.C.I., Guntur is examined as M.W. 2. They filed Exs. M1 to M17

## 5. The points for consideration are :

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sattenpalli owned by the Food Corporation of India from 1975 to 1981?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?
- (4) The claim of the petitioner is barred by Res judicata.

6. Point No. 1.—The admitted facts of the case are as follows: The Food Corporation of India constructed a Rice Mill at Sattenpalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dated 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M2 letter dated 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6th August, 1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows : M.W. deposed to the method of granting contract and payment of amount to the contractors as follows :

"The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao. . . . . So long as I was there as Unit Officer the District Manager was sending a cheque for the amount pay-

able to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mister Subbayya after the bill submitted by him was passed by me."

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the District Manager of F.C.I. Even in the Bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W. 1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Mutta workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are mutta workers who have completed 130 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W4 letter dated 13-9-77. M.W. 1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Mutta Maistry who in turn distributes the wages to these labourers and furnished us the acquaintance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor absconded from 15-8-1975, H & T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's certificate reads as follows :

Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct."

8 Though the respondent mentioned in Ex. M6 letter dated 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lump-sum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mohideen and Sons vs. United Bidi Workers' Union Salem and another 1964 (2) LLJ 633 that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. Point No. 2.—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. Point No. 3.—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dated 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. Point No. 4.—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dated 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :

(1) STATE OF ASSAM & ANOTHER vs. RAGHAVA RAJAGOPALACHARI (1972 SLR 44 Page 414).

(2) BOMBAY GAS CO. LTD. vs. JAGANNATH PANDURANG & OTHERS [1975 (31) FLR PAGE 166(SC)] ; AND

(3) THE PUNJAB CO-OP. BANK LTD. vs. R. S. BHATIA (DIED) THROUGH LRS. [1975 (31) FLR PAGE 326 (SC)].

I. therefore hold that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. FD-4(4)/85 Vol. II dated 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res. judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of evidence

Witness examined for the petitioner :

WW1—B. Peddanna.

Witness examined for the Respondent :

M.W.1—K. Sudhakara Rao.

M.W. 2—K. Venkateswarlu.

Documents marked for the Petitioner

Ex. W1.—Xerox copy of the statement showing the Attendance particulars.

Ex. W2.—Xerox copy of the confidential letter dt. 21-4-78 to Distt. Manager, FCI, by M.W.I.

Ex. W3.—Xerox copy of the letter dt. 16-12-77 addressed to the Distt. Manager, FCI, Guntur.

Ex. W4.—Xerox copy of the Lr. dt. 13-8-77 addressed to the Distt. Manager, enclosing the list of names of 73 regular employees etc.

Ex. W5.—Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

Documents marked for the Respondent

Ex. M1.—Xerox copy of the Tender Notice dt. 6-12-73.

Ex. M2.—Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.

Ex. M3.—Xerox copy of the Bill submitted by M. Subbayya.

Ex. M4.—Xerox copies of the Bills submitted by M. Subbayya.

Ex. M5.—Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.

Ex. M6.—Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Distt. Manager, FCI, Guntur.

Ex. M7.—Xerox copy of the proceedings dt. 16-9-81 under Sec. 7A of Employees Provident Fund Act.

Ex. M8.—Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Distt. Manager, FCI, Guntur.

Ex. M9.—Xerox copy of the letter dt. 5-11-81 to the Regional P.F. Commissioner.

Ex. M10.—Order dt. 31-7-78 of the Authority under Payment of Wages Act (xerox copy).

Ex. M11.—Letter dt. 2-5-86 by the Personnel Manager (xerox copy).

Ex. M12.—Xerox copy of letter dt. 6-5-87 by the Personnel Manager.

Ex. M13.—Xerox copy of Lr. dt. 24-8-92 by the Executive Director.

Ex. M14.—Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.

Ex. M15.—Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.

Ex. M16.—Xerox copy of letter dt. 25-10-75 to the Regl. Manager.

Ex. M17.—Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 6 अगस्त, 1997

कां.प्रा. 2196.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबंध में, और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[संख्या एल-22012/399/95—आई आर (सी-II)]

एस. रविश अली, डैस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2196.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on 4-8-1997.

[No. L-22012/399/95-IR. (C-II)]  
S. RAVISH ALI, Desk Officer.

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD.

#### PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated : 26th day of June, 1997

Industrial Dispute No. 45 of 1996

#### BETWEEN

K. Nageswara Rao, Ex. Casual Labour, Modern Rice Mill, FCI, Sathenapalli, Guntur District, A.P., 522 001 .. Petitioner

#### AND

The Sr. Regional Manager, Food Corporation of India, Regional Office Hyderabad-500 001.

.. Respondent

#### APPEARANCES :

Sri Ch. Laxminarayana, Advocate for the Petitioner.

Sri B. G. Ravinder Reddy, Advocate for the Respondent.

#### AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/399/95-IR (C-II), referred the following Dispute under Section 10(1)(d) and 2-A of Industrial Disputes Act, 1947 for adjudication :

“Whether Shri K. Nageswara Rao was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur Ristt. during the period of 6 years from 1975—81 ? If so, whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1(4)/85 Vol. II dated 6-5-1987 and EP-1(3)/91 Vol. II dated 24-8-1992 is legal and justified ? If not what relief the workman is entitled to ?

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the ‘Petitioner’ filed a claim statement contending as follows : The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However, the Corporation selected Mr. Subbayya as Muttah Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labour which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dated 6-5-1987 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dated 24-8-1992 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yogamma and Rehmat Khatam who worked alongwith the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows : The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rehmat Khatam were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sathenapalli is not in existence and it is closed long back. The claim of the petitioner is a state claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W.1 and filed Exs. W1 to W5. The then Unit Manager of

Modern Rice Mill is examined as M.W. 1 and the Clerk in the Office of the Dist. Manager, F.C.I. Guntur is examined as M.W. 2. They filed Exs. M1 to M17.

5. The points for consideration are :

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sethenapalli owned by the Food Corporation of India from 1975 to 1981 ?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified ?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified ?
- (4) The claim of the petitioner is barred by Res Judicata ?

6. Point No. 1 :—The admitted facts of the case are as follows : The Food Corporation of India constructed a Rice Mill at Sathenapalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M-1 Notice dt. 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-1974 to 9-4-1976 by Ex. M2 letter dt. 5-4-1974. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Muttah Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godowns.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The 2106 GI/97—14.

reasons are as follows : M.W. 1 deposed to the method of granting contract and payment of amount to the contractors as follows :

“The Regional Office called for tenders by publishing an advertisement in the newspapers, or acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullapudi Subbaiah. He accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao . . . . .

So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me.”

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the Dist. Manager of F.C.I. Even in the Bills Exs. M3 and M4 (Xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Muttah Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W-1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W. 1 conveniently pleads the ignorance as to whether he wrote Ex. W-2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Muttah workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-77. He noted that Mr. Subbayya and 16 others are Muttah workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W-4 letter dt. 13-9-1977. M.W. 1 himself admitted that the

petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

“The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Mutta Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H & T Work is now directly handled in the above manner.”

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Exs. M-3 or Ex. M4 bills. We can see from the Certificate of concerned officer appointed to Exs. M3 and M4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's certificate reads as follows :

“Certified that the Bill submitted by the Haimalies Maistry has been clarified with the relevant records and found correct.”

8. Though the respondent mentioned in Ex. M-6 letter dt. 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbaya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D.C. Dewan Mohideen Sahib & Sons vs. United Bidi Worker's Union Salem & Another [1964(2) LLJ 633] that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. Point No. 2 :—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-1981 the petitioner who was a direct employee of the Respondent Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. Point No. 3 :—The daily wages labour who have put in 3 months service are entitled to regularisation as per Circular dt. 6-5-1987 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. POINT No. 4.—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of Payment of Wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :

- (1) State of Assam & Another vs. Raghava Rajagopalachari (1972 SLR 44 Page 414).
- (2) Bombay Gas Co. Ltd. Vs. Jagannath Pandurang & others [1975(31) FLR Page 166 (SC)] and
- (3) The Punjab Co-op. Bank Ltd. vs. R.S. Bhatia (died) through L.Rs. [1975(31) FLR Page 326 (SC)].

I, therefore, hold that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res Judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-1992 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res Judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-i(4)/85 Vo. II dt. 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res Judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

#### Appendix of evidence

Witness examined for the petitioner      Witness examined for the Respondent

WW1 : K. Nageswara Rao

M.W. 1 : K. Sudhakara Rao

M.W. 2 : K. Venkateswarlu,  
Documents marked for the Petitioner

Ex. W1 : Xerox copy of the statement showing the Attendance particulars.

Ex. W-2 : Xerox copy of the confidential letter dt. 24-4-78 to Dist. Manager, FCI, by M.W.1.

Ex. W 3 : Xerox copy of the letter dt. 16-12-77 addressed to the Distt. Manager, FCI, Guntur.

Ex. W-4 : Xerox copy of the Lr. dt. 13-9-1977 addressed to the District Manager, enclosing the list of names of 73 regular employees etc.

Ex. W. 5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent

Ex. M 1 : Xerox copy of the tender Notice dt. 6-12-73.

Ex. M 2 : Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.

Ex. M-3 : Xerox copy of the Bill submitted by M. Subbayya.

Ex. M 4 : Xerox copy of the Bills submitted by M. Subbayya.

Ex. M 5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.

Ex. M 6 : Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.

Ex. M 7 : Xerox copy of the proceedings dt. 16-9-81 under Sec. 7-A of Employees Provident Fund Act.

Ex. M 8 : Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Dist. Manager, FCI, Guntur.

Ex. M 9 : Xerox copy of the letter dt. 5-11-81 to the Regional P.F. Commissioner.

Ex. M 10 : Order dt. 31-7-78 of the Authority under Payment of Wages Act (Xerox copy).

Ex. M 11 : Letter dt. 2-5-86 by the Personnel Manager (Xerox copy).

Ex. M 12 : Xerox copy of letter dt. 6-5-87 by the Personnel Manager.

Ex. M 13 : Xerox copy of Lr dt. 24-8-92 by the Executive Director.

Ex. M 14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.

Ex. M 15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.

Ex. M 16 : Xerox copy of letter dt. 25-10-75 to the Regl. Manager.

Ex. M 17 : Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 6 अगस्त, 1997

का आ 2197.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य नियम के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[संख्या एल-22012/398/95-आई आर (सी-II)]

एस. रविश अली, डेस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2197.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on 4-8-1997.

[No. L-22012/398/95-IR(C.II)]

S. RAVISH ALI, Desk Officer

#### ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT  
HYDERABAD

#### PRESENT:

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated : 26th day of June, 1997

Industrial Dispute No. 44 of 1996

#### BETWEEN

G. Ayyanna Ex. Casual Labour, Modern Rice Mill, FCI, Sathenapalli, Guntur District,  
A.P.-522 001 .. PETITIONER

## AND

The Sr. Regional Manager,  
Food Corporation of India, Regional  
Office,

Hyderabad-500 001. . . Respondent.

## APPEARANCES:

Sri Ch. Laxminarayana, Advocate for the Petitioner.

Sri. B. G. Ravinder Reddy, Advocate for the Respondent.

## AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/398/95-IR (C.II) Dated : referred the following Dispute under Section 10(1)(d) & 2A of Industrial Disputes Act, 1947 for adjudication :

"Whether Shri G. Ayyanua was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur Distt. during the period of 6 years from 1975---81? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1(4)/85/Vol. II dt. 6-5-87 and EF-1(3)/91 Vol. II dated 24-8-92 is legal and justified? If not, to what relief the workman is entitled to ?

Both parties received the notices and filed their pleadings.

2. The workman hereinafter called the 'Petitioner' filed a claim statement contending as follows : The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr. Subbayya as Muttah Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dt. 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dt. 24-8-92 calling for the particulars of

casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yogamma and Rehmat Khatan who worked alongwith the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows:—The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rehmat Khatan were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sattenpalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W.1 and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W.1 and the Clerk in the Office of the Dist. Manager, F.C.I., Guntur is examined as MW2. They filed Exs. M1 to M17.

5. The points for consideration are :

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sathenapalli owned by the Food Corporation of India from 1975 to 1981?
- (2) Whether the action of the management in terminating the services of the workman in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?
- (4) The claim of the petitioner is barred by Res judicata?

6. POINT NO. 1.—The admitted facts of the case are as follows : The Food Corporation of India constructed a Rice Mill at Sattenpalli in the first instance and the Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stocks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos



or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dt. 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M2 letter dt. 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows :—M.W.1 deposed to the method of granting contract and payment of amount to the contractors as follows :

“The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tenders is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work

to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao. . . . . So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me.”

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the Dist. Manager of F.C.I. Even in the Bills Exs. M3 and M-4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W.1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Muttah workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-77. He noted that Mr. Subbayya and 16 others are mutta workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W4 letter dt. 13-9-77. M.W.1 himself admitted that the petitioners, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

“The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them. Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Muttah Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H & T Work is now directly handled in the above manner.”

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's certificate reads as follows:

Certified that the Bill submitted by the Hamlies Maistry has been clarified with the relevant record and found correct."

8. Though the respondent mentioned in Ex. M6 letter dt. 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workman and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. DEWAN MOHIDEEN SAHIB and SONS vs. UNITED BIDI WORKERS' UNION SALEM & ANOTHER [1964(2) LLJ 633] that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances. I held that the petitioner is direct employee of the respondent-Corporation and not contract labour.

10. POINT NO. 2.—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical terminaion for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporatin was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. POINT NO. 3.—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dt. 6-5-87 referred to in the claims statement. It is denied by the respondent. So the petitioner is entitled for regularisation.

12. POINT NO. 4.—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dt. 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of Wages Act is employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :

- (1) STATE OF ASSAM & ANOTHER vs. RAGHAVA RAJA GOPALACHARI (1972 SLR 44 Page 414)..
- (2) BOMBAY GAS CO. LTD. Vs. JAGAN-NATH PANDURANG & OTHERS [(1975 (31) FLR PAGE 166(SC)] and
- (3) THE PUNJAB CO-OP. BANK LTD vs. R. S. BHATIA (DIED) THROUGH L.R.S. [1975 (31) FLR PAGE 326(SC)].

I, therefore held that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res Judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res Judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-i(4)|85 Vol. II dt. 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principle of Res Judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

#### Appendix of evidence

Witness examined for the petitioner	Witness examined for the Respondent
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WW1 : G. Ayyanna

M.W.1 : K. Sudhakara Rao

M.W.2 : K. Venkateswarlu

#### Documents marked for the Petitioner

Ex. W1 : Xerox copy of the statement showing the Attendance particulars.

Ex. W2 : Xerox copy of the confidential letter dt. 24-4-78 to Dist. Manager, FCI, by M.W.1.

Ex. W 3 : Xerox copy of the letter dt. 16-12-77 addressed to the Dist. Manager, FCI Guntur.

Ex. W 4 : Xerox copy of the Lr. dt. 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.

Ex. W 5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

## Documents marked for the Respondent

- Ex. M 1 : Xerox copy of the Tender Notice dt. 6-12-73.
- Ex. M 2 : Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.
- Ex. M 3 : Xerox copy of the Bill submitted by M. Subbaya.
- Ex. M 4 : Xerox copies of the Bills submitted by M. Subbaya.
- Ex. M 5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.
- Ex. M 6 : Xerox copy of the letter dt. 13-5-81 addressed by the Distt. Manager to Distt. Manager, FCI, Guntur.
- Ex. M 7 : Xerox copy of the proceedings dt. 16-9-81 under Sec. 74 of Employees Provident Fund Act.
- Ex. M 8 : Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Dist. Manager, FCI, Guntur.
- Ex. M 9 : Xerox copy of the letter dt. 5-11-81 to the Regional P.F. Commissioner.
- Ex. M 10 : Order dt. 31-7-78 of the Authority under Payment of Wages Act (xerox copy).
- Ex. M 11 : Letter dt. 2-5-86 by the Personnel Manager (xerox copy).
- Ex. M 12 : Xerox copy of letter dt. 6-5-87 by the Personnel Manager.
- Ex. M 13 : Xerox copy of Lr. dt. 24-8-92 by the Executive Director.
- Ex. M 14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.
- Ex. M 15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.
- Ex. M 16 : Xerox copy of letter dt. 25-10-75 to the Regl. Manager.
- Ex. M 17 : Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

V. V. RAGHAVAN, Industrial Tribunal-I

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2198.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबंध में, नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[संख्या एल-22012/396/95-आई आर (सी-II)]

एस. राविश अली, डेस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2198.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on 4-8-1997.

[L-22012/396/95-IR(C.II)]

S. RAVISH ALI, Desk Officer

BEFORE THE INDUSTRIAL TRIBUNAL  
AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B.,  
Industrial Tribunal-1.

Dated : 26th day of June, 1997.

INDUSTRIAL DISPUTE NO. 76 OF 1996

BETWEEN

B. Chennaiah Ex. Casual Labour.  
Modern Rice Mill,  
FCI, Sathenapalli,  
Guntur District,  
A. P.-522 001. .. Petitioner

AND

The Sr. Regional Manager,  
Food Corporation of India, Regional,  
Office, Hyderabad-500 001.

.. Respondent

APPEARANCES :

Sri Ch. Laxminarayana, Advocate for the  
Petitioner.

Sri B. G. Ravinder Reddy, Advocate for  
the Respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/396/95-IR(C.II) dated 7-6-1996 referred the following Dispute under Section 10(1)(d) & 2A of Industrial Disputes Act, 1947 for adjudication :—

“Whether Sh. B. Chennaiah was the workman of FCI at Modern Rice Mill, Sathonapalli, Guntur Distt. during the period of 6 years from 1975—81? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1(4)|85 Vol. II dated 6-5-87 and EP-1(3)|91 Vol. II dated 24-8-1992 is legal and justified? If not what relief the workman is entitled to?”

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the ‘Petitioner’ filed a claim statement contending as follows : The petitioner was originally engaged as labour by the Contractor by name D.V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr. Subbayya as Muttah Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dated 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dated 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yogamma and Rehmat Khatam who worked

alongwith the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows : The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry, till 1981, was receiving the money and paying it to the labour, engaged to him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rehmat Khatam were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sathenapalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W.1 before the Advocate-Commissioner at Guntur and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W.1 and the Clerk in the Office of the Dist. Manager, F.C.I., Guntur is examined as M.W.2. They filed Exs. M1 to M17.

5. The points for consideration are :—

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sathenapalli owned by the Food Corporation of India from 1975 to 1981?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?
- (4) The claim of the petitioner is barred by Res judicata?

6. Point No. 1.—The admitted facts of the case are as follows : The Food Corporation of

India constructed a Rice Mill at Sattanpalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Siales or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dated 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-1974 to 9-4-1976 by Ex. M2 letter dated 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor, the reasons are as follows : M.W.1 deposed to the method of granting contract and payment of amount to the contractors as follows :—

2106 GI/97—15

“The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D.V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D.V. Subba Rao....

So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me.”

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the District Manager of F.C.I. Even in the Bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was

also working in the Mill and the number of days he worked was also noted therein. Though M.W.1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Muttah workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are Muttah workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W1, letter dated 13-9-77, M.W.1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :—

“The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchett Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Muttah Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Muttah Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H & T Work is now directly handled in the above manner.”

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Muttah Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Muttah Maistry or Headman. The concerned Officer's certificate reads as follows:—

“Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct.”

8. Though the respondent mentioned in Ex. M6 letter dated 13-5-81 that Muttah Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working along with other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mohideen Sahib & Sons Vs. United Bidi Workers' Union Salem & Another (1964- (2) LLJ 633 that when the intermediary is found to be man of impecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. POINT NO. 2.—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. POINT NO. 3.—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dated 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. POINT NO. 4.—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dated 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by

the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :—

- (1) State of Assam and Another vs. Raghava Rajagopalachari (1972 SLR 44 Page 414).
- (2) Bombay Gas Co. Ltd. Vs. Jagannath Pandurang & Others [1975 (31) FLR Page 166(SC)] and
- (3) The Punjab Co-Op. Bank Ltd. Vs. R. S. Bhatia (Died) through LRS. [1975 (31) FLR Page 326 (SC)].

1. therefore held that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, It is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-1(4)85 Vo.II dated 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I.

## Appendix of evidence

Witness examined for  
the petitioner.  
B. Chennaiah,  
(Before the Advocate-  
Commissioner at Guntur).

Witness examined for the  
Respondent.

M.W.1 : K. Sudhakara Rao

M.W.2 : K. Venkataswarlu

### Documents marked for the Petitioner

Ex. W1 : Xerox copy of the statement showing the Attendance particulars.

Ex. W2 : Xerox copy of the confidential letter dated 24-4-78 to Dist. Manager, FCI, by M.W.1.

Ex. W 3 : Xerox copy of the letter dated 16-12-77 addressed to the Dist. Manager, FCI, Guntur.

Ex. W 4 : Xerox copy of the letter dated 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.

Ex. W 5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

### Documents marked for the Respondent

Ex. M 1 : Xerox copy of the Tender Notice dated 6-12-1973.

Ex. M 2 : Xerox copy of the order dated 5-4-1974 to D.V. Subba Rao.

Ex. M 3 : Xerox copy of the Bill submitted by M. Subbayya.

Ex. M 4 : Xerox copies of the Bills submitted by M. Subbayya.

Ex. M 5 : Xerox copy of the letter dated 4-1-80 issued by the Provident Fund Commissioner.

Ex. M 6 : Xerox copy of the letter dated 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.

Ex. M 7 : Xerox copy of the proceedings dated 16-9-81 under Sec. 7A of Employees Provident Fund Act.

Ex. M 8 : Xerox copy of the letter dated 14-10-81 by the Sr. Regl. Manager to Dist. Manager, FCI, Guntur.

Ex. M 9 : Xerox copy of the letter dated 5-11-81 to the Regional P. F. Commissioner.

Ex. M 10 : Order dated 31-7-78 of the Authority under Payment of Wages Act (Xerox copy).

Ex. M 11 : Letter dated 2-5-86 by the Personnel Manager (Xerox copy).

Ex. M 12: Xerox copy of letter dated 6-5-87 by the Personnel Manager.

Ex. M 13 : Xerox copy of letter dated 24-8-92 by the Executive Director.

Ex. M 14 : Xerox copy of order dated 29-6-83 of Hon'ble High Court in WP No. 11963/84.

Ex. M 15 : Xerox copy of order dated 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.

Ex. M 16 : Xerox copy of letter dated 25-10-75 to the Regl. Manager.

Ex. M 17 : Xerox copy of letter dated 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2199.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[सं.एल-22012/395/95 आई आर (सी-II)]

एस. रविश अली, डेस्क अधिकारी

New Delhi, the 6th August, 1997

of Food Corporation of India and their workman, which was received by the Central Government on 4-8-97.

[No. L-22012/395/95-IR(C-II)]

S. RAVISH ALI, Desk Officer

# ANNEXURE

## BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

### PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I  
Dated, 26th day of June, 1997  
Industrial Dispute No. 46 of 1996

### BETWEEN :

T. Balaguravaiah Ex. Casual Labour,  
Modern Rice Mill, FCI, Sathenapalli,  
Guntur District, A.P., 522 001 ... Petitioner.

### AND

The Sr. Regional Manager,  
Food Corporation of India, Regional,  
Office, Hyderabad-500 001. ... Respondent.

### APPEARANCES :

Sri Ch. Laxminarayana, Advocate—for the Petitioner.

Sri B. G. Ravinder Reddy, Advocate—for the Respondent.

### AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/395/95-IR(C-II) dated, 12-4-96 referred the following Dispute under Section 10(1)(d) & 2A of Industrial Disputes Act, 1947 for adjudication :—

"Whether Sri T. Balaguravaiah was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur Distt. during the period of 6 years from 1975-81? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EP-1(4)/85 Vol. II dt. 6-5-87 and EP-1(3)/91 Vol. II dated 24-8-92 is legal and justified? If not what relief the workman is entitled to?"

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the 'Petitioner' filed a claim statement contending as follows : The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr. Subbayya as Mutta Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dt. 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dt. 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a

S.O. 2199.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management



contract labour. The respondent, however, regularised the services of other workers, namely Dayamma, Ragamma and Kenmar Khatam who were working along with the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the conditions of the respondent.

3. The respondent filed a counter containing as follows. The petitioner was never employed directly by the respondent corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975 the work of the handling and transporting the paddy was entrusted to Mr. Subbayya a mutual Maistry of contract basis on the same terms and conditions. The said Subbayya contractor though called as mutual Maistry, in 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Ragamma and Kenmar Khatam were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sathenapalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W.1 and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W.1 and the Clerk in the Office of the Dist. Manager, F.C.I., Guntur is examined as M.W.2. They filed Exs. M1 to M17.

5. The points for consideration are :—

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sathenapalli owned by the Food Corporation of India from 1975 to 1981?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?
- (4) The claim of the petitioner is barred by Res judicata?

6. Point No. 1.—The admitted facts of the case are as follows : The Food Corporation of India constructed a Rice Mill at Sathenapalli in the first instance and the Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sathos or in the par-boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dt. 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M2 letter dt. 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Muttah Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workers worked from 1975 to 1981. The respondent pleads that they worked directly as employees of F.C.I. and the F.C.I. has only set up Sri Subbayya as a contractor. The reasons are as follows. M.W.1 deposed as to the method of granting contract and payment of amount to the contractors as follows :—

The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were being tendered before the District Manager, Guntur within the stipulated time and date. The District Manager opens the tenders, prepares a detailed statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Hyderabad if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Muttamudi Subbaiah. He accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao.....so long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me."

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the Dist. Manager of F.C.I. Even in the bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Muttah Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W.1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Muttah workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are muttah workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W4 letter dt. 13-9-77. M.W.1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :—

"The third list containing names 1 to 30 commencing from Muttamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Muttah Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Muttah Maistry who in turn distributes the wages to these labourers and furnish us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H & T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Muttah Maistry and who was received the money from the Management and dis-

frustrating the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Master of Headman. The concerned Officer's certificate reads as follows :—

Certified that the Bill submitted by the Hamalies Masterly has been claimed with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M6 letter dt. 13-3-81 that Masterly is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mondeen Sami & Sons vs. United Bidi Workers Union Salem & another (1964) 2 LLJ 635 that when the intermediary is found to be man of impecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. Point No. 2.—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. Point No. 3.—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dt. 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. Point No. 4.—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dt. 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res. Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of Payment of Wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :—

- (1) State of Assam & another vs. Raghava Rajagopalachari (1972 SLR 44 Page 414),
- (2) Bombay Gas Co. Ltd. Vs. Jagannath Pandurang & others (1975 (31) FLR Page 166(SC), and
- (3) The Punjab Co-Op. Bank Ltd. vs. R. S. Bhatia (DJED) through L.Rs. (1975 (31) FLR page 326 (SC)).

I, therefore held that the claim is barred by Res. Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is main-

taining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-1(4)85 Vol. II dt. 6-5-87. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

#### Appendix of evidence

Witness examined for the Petitioner

Witnesses examined for the Respondent

WW1: T. Balaguravaiah

M.W.1 : K. Sudhakara Rao

M.W.2 : K. Venkateswarlu

#### Documents marked for the Petitioner

Ex. W1 : Xerox copy of the statement showing the Attendance particulars.

Ex. W2 : Xerox copy of the confidential letter dt. 24-4-78 to Distt. Manager, FCI, by M.W. 1

Ex. W 3 : Xerox copy of the letter dt. 16-12-77 addressed to the Distt. Manager, FCI, Guntur.

Ex. W 4 : Xerox copy of the Lr. dt. 13-9-77 addressed to the Distt. Manager, enclosing the list of names of the 73 regular employees, etc.

Ex. W 5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent

Ex. M 1 : Xerox copy of the Tender Notice dt. 6-12-73.

Ex. M 2 : Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.

Ex. M 3 : Xerox copy of the Bill submitted by M. Subbayya.

Ex. M 4 : Xerox copies of the Bills submitted by M. Subbayya.

Ex. M 5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.

Ex. M 6 : Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Distt. Manager, FCI, Guntur.

Ex. M 7 : Xerox copy of the proceedings dt. 16-9-81 under Sec. 7A of Employees Provident Fund Act.

Ex. M 8 : Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Distt. Manager, FCI, Guntur.

Ex. M 9 : Xerox copy of the letter dt. 5-11-81 to the Regional P.F. Commissioner.

Ex. M 10 : Order dt. 31-7-78 of the Authority under Payment of Wages Act (xerox copy).

Ex. M 11 : Letter dt. 2-5-86 by the Personnel Manager (xerox copy).

Ex. M 12 : Xerox copy of letter dt. 6-5-87 by the Personnel Manager.

Ex. M 13 : Xerox copy of Lr. dt. 24-3-92 by the Executive Director.

Ex. M 14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.

Ex. M 15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.

Ex. M 16 : Xerox copy of letter dt. 25-10-75 to the Regl. Manager.

Ex. M 17 : Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

V. V. RAGHAVAN, Industrial Tribunal-I, Hyderabad

नई दिल्ली, 6 अगस्त, 1997

कां.आ. 2200.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबन्धन के सम्बन्ध नियोक्तों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[सं. एन 22012/393/95 आई. आर. (सी II)]

एस. राविश अली, डेस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on 4-8-1997.

[No. L-22012/393/95-IR (C-II)]

S. RAVISH ALI, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

#### PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated, 26th day of June, 1997

Industrial Dispute No. 49 of 1996

#### BETWEEN

Ch. Koti Reddy Ex. Casual Labour,  
Modern Rice Mill, FCI, Sathenapalli,  
Guntur District, A.P.-522001 .. Petitioner

#### AND

The Sr. Regional Manager,  
Food Corporation of India, Regional Office,  
Hyderabad-500001 .. Respondent

#### APPEARANCES :

Sri Ch. Iaxminaravana, Advocate—for the Petitioner.  
Sri B. G. Ravinder Reddy, Advocate—for the Respondent.

#### AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. J-22012/393/95-IR (C-II) dated 12-4-1996 referred the following dispute under Section 10(1)(d) and 2-A of Industrial Disputes Act, 1947 for adjudication :

"Whether Sri Ch. Koti Reddy was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur Distt. during the period of 6 years from 1975-81? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1 (4)/85 Vol. II dated 6-5-87 and EP-1 (3)/91 Vol. II dated 24-8-92 is legal and justified? If not what relief the workman is entitled to?"

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the 'Petitioner' filed a claim statement contending as follows :

The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr Subbayya as Muttah Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dated 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-Corporation issued another circular dated 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Davamma, Yamma and Rehmat Khatam who worked along with the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows :

The petitioner was never employed directly by the respondent Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Davamma, Yamma and Rehmat Khatam were engaged for sweeping etc. and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sathenapalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as WW-1 and filed Exs. W-1 to W-5. The then Unit Manager of Modern Rice Mill is examined as MW-1 and the Clerk in the Office of the Dist. Manager FCI Guntur is examined as MW-2. They filed Exs. M-1 to M-17.

## 5. The points for consideration are :

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sattenapalli owned by the Food Corporation of India from 1975 to 1981 ?
- (2) Whether the action of the management in terminating the services of the workman in 1981 is justified ?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified ?
- (4) The claim of the petitioner is barred by Res judicata ?

## 6. Point No. 1—The admitted facts of the case are as follows :

The Food Corporation of India constructed a Rice Mill at Sattenapalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M-1 Notice dated 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M-2 letter dated 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbayya upto 1981. The respondent pleads that entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a Contractor. The reasons are as follows :

MW-1 deposed to the method of granting contract and payment of amount to the contractors as follows :

"The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders, prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao . . . . .

So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me."

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the Dist. Manager of F.C.I. Even in the Bills Exs. M-3 and M-4 (Xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W-1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though MW-1 conveniently pleads the ignorance as to whether he wrote Ex. W-2 letter or not, taking advantage of the fact that it is a Xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Mutta workers. Ex. W-3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are Mutta workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W-4 letter dated 13-9-77. MW-1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kusumchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Mutta Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H and T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M-3 or Ex. M-4 bills. We can see from the Certificate of concerned Officer appended to Exs. M-3 and M-4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's certificate reads as follows :

"Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M-6 letter dated 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mohideen Sahib and Sons Vs. United Bidi Workers' Union Salem and others [1964 (2) I.L.J. 633] that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. Point No. 2—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-1-81 the petitioner who was a direct employee of the Respondent Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. Point No. 3—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dated 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. Point No. 4—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M-10 order dated 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of Wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in

- (1) State of Assam and another Vs. Raghava Rajagopalachari (1972 SLR 44 Page 414)
- (2) Bombay Gas Co. Ltd. Vs. Jagannath Pandurang and others [1975 (31) FLR Page 166 (SC)] and
- (3) The Punjab Co-op. Bank Ltd. Vs. R. S. Bhatia (Died) through L.Rs. [1975 (31) FLR Page 326 (SC)].

I, therefore held that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. FP-1 (4)/85 Vol. II dated 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal

#### Appendix of evidence

Witness examined for the  
Petitioner :

WW-1—Ch. Koti Reddy.

Witness examined for the

Respondent :

MW-1—K. Sudhakara Rao.

MW-2—K. Venkateswarlu.

2106 GI/97—16

#### Documents marked for the Petitioner

- Ex. W-1—Xerox copy of the statement showing the Attendance particulars.
- Ex. W-2—Xerox copy of the confidential letter dated 24-4-78 to Dist. Manager, FCI, by MW-1.
- Ex. W-3—Xerox copy of the letter dated 16-12-77 addressed to the Dist. Manager, FCI, Guntur.
- Ex. W-4—Xerox copy of the Lr. dated 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.
- Ex. W-5—Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent

- Ex. M-1—Xerox copy of the Tender Notice dated 6-12-73.
- Ex. M-2—Xerox copy of the Order dated 5-4-74 to D. V. Subba Rao.
- Ex. M-3—Xerox copy of the Bill submitted by M. Subbayya.
- Ex. M-4—Xerox copy of the Bills submitted by M. Subbayya.
- Ex. M-5—Xerox copy of the letter dated 4-1-80 issued by the Provident Fund Commissioner.
- Ex. M-6—Xerox copy of the letter dated 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.
- Ex. M-7—Xerox copy of the proceedings dated 16-9-81 under Section 7-A of Employees Provident Fund Act.
- Ex. M-8—Xerox copy of the letter dated 14-10-81 by the Sr. Regional Manager to Dist. Manager, FCI, Guntur.
- Ex. M-9—Xerox copy of the letter dated 5-11-81 to the Regional P. F. Commissioner.
- Ex. M-10—Order dated 31-7-78 of the Authority under Payment of Wages Act (Xerox copy).
- Ex. M-11—Letter dated 2-5-86 by the Personnel Manager (Xerox copy).
- Ex. M-12—Xerox copy of letter dated 6-5-87 by the Personnel Manager.
- Ex. M-13—Xerox copy of Lr. dated 24-8-92 by the Executive Director.
- Ex. M-14—Xerox copy of order dated 29-6-88 of Hon'ble High Court in WP No. 11963/84.
- Ex. M-15—Xerox copy of Order dated 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.
- Ex. M-16—Xerox copy of letter dated 25-10-75 to the Regional Manager.
- Ex. M-17—Xerox copy of letter dated 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 7 अगस्त, 1997

कां.प्रा. 2201.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एक. सी. आई. के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निश्चित औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-8-97 को प्राप्त हुआ था।

[संख्या एल. 22012/394/95 आई. प्रार. (सी II)]

एस. रविश अली, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on 5-8-97.

[No. L-22012/394/95-IR (C.II)]  
S. RAVISH ALI, Desk Officer

# ANNEXURE

## BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

### PRESENT:

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated, 26th day of June, 1997

Industrial Dispute No. 35 of 1996

### BETWEEN

D. Pedda Ramaiah, Ex. Casual Labour,  
Modern Rice Mill, FCI, Sathenapalli,  
Guntur District, A.P.-522001. ... Petitioner.

### AND

The Sr. Regional Manager,  
Food Corporation of India, Regional  
Office, Hyderabad-500001. ... Respondent.

### APPEARANCES:

Sri Ch. Laxminaravana, Advocate for the Petitioner.  
Sri B. G. Ravinder Reddy, Advocate for the Respondent.

### AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/394/95-IR(C.II) dated 11-4-1996 referred the following dispute under Sections 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication:

"Whether Shri D. Pedda Ramaiah was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur District during the period of 6 years from 1975-81? If so, whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1(4)/85 Vol. II dated 6-5-87 and EP-1(3)/91 Vol. II dated 24-8-92 is legal and justified? If not what relief the workman is entitled to?

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the 'Petitioner' filed a claim statement contending as follows: The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one. Mister Subbhayya as Mutta Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lump-sum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbhayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dt.

6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dated 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yoganma and Rehmat Khatam who worked along-with the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows: The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao, contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbhayya a Mutta Maistry on contract basis on the same terms and conditions. The said Subbhayya, contractor though called as Mutta Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner, Dayamma, Yoganma and Rehmat Khatam were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sathenapalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W. 1 and filed Exs W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W. 1 and the Clerk in the Office of the District Manager FCI, Guntur is examined as M.W. 2. They filed Exs M1 to M17.

5. The points for consideration are:

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sathenapalli owned by the Food Corporation of India from 1975 to 1981?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?
- (4) The claim of the petitioner is barred by Res judicata?

6. Point No. 1.—The admitted facts of the case are as follows: The Food Corporation of India constructed a Rice Mill at Sathenapalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes ruttling the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dated 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-1-74 to 9-4-76 by Ex. M2 letter dated 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbhayya upto 1981. The respondent pleads that they entrusted the work of contractor to Mr. Subbhayya that the said Subbhayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-1-1981 the FCI is expanding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to

whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows: M.W. 1 deposed to the method of granting contract and payment of amount to the contractors as follows

"The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transportation. The interested parties were making tenders before the District Manager, Cuttack within the stipulated date and time. The District Manager opens the tenders prepared a nominated attachment and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tenders to the District Manager at Madras the tender upto certain monetary limit. He has to send the tender to the District Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by R.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before awarding the contract work to Mr. Muttiah Subbaiah. We received his offer to do the work at the same rate given to Mr. D. V. Subba Rao. .... So long as I was there as Civil Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Civil Officer. I was endorsing the cheque and paying cash to Mr. Subbayya and the bill submitted by him was passed by me."

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the District Manager of F.C.I. Even in the bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Muttah Maistry and Hamah Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W. 1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Muttah workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are muttah workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W4 letter dated 13-9-77. M.W. 1 himself admitted that the petitioner, other workers and Mister Subbayya are handling the work and without any intermediary. It is as follows:

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Muttah Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Muttah Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H & T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a muttah maistry only who was receiving the money from the management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only muttah maistry for readman. The concerned Officer's certificate reads as follows:

"Certified that the Bill submitted by the Hamahes Maistry has been claimed with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M6 letter dated 15-5-81 that muttah maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working along with other workmen and receiving the wages.

9. Mr. Subbayya is man or no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, to keep-sum and distribute the same to the workers. The Supreme Court held in the case of *D. C. Dewan Mundoon Sahib & Sons vs. United Mill Workers' Union Sahib and Another* [1974 (2) L.J. 553] that when the intermediary is found to be man or inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-corporation and not contract labour.

10. Point No. 2.—Though the respondent-corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the respondent-corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. Point No. 3.—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dated 9-5-81 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12.—Point No. 4.—The petitioner and others approached the authority under Payment of Wages Act claiming rev., wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dated 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or no., for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in:

- (1) STATE OF ASSAM & ANOTHER vs. RAGHAVA RAJAGOPALACHARI (1972 SLR 44 PAGE 414).
- (3) BOMBAY GAS CO. LTD. vs. JAGANNATH PANDURANG & OTHERS [1975 (31) FLR PAGE 166 (SC)] and
- (3) THE PUNJAB CO-OP. BANK LTD. vs. R. S. BHATIA (DIED) THROUGH L. RS. [1975 (31) FLR PAGE 326 (SC)].

I, therefore, held that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res Judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence.

It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res Judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-1(4)/85 Vol. II dated 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res Judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I  
Hyderabad.

#### Appendix of evidence

Witness examined for the petitioner	Witness examined for the Respondent
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WW1 : D. Pedda Ramsiah

M.W.1 : K. Sudhakara Rao

M.W.2 : K. Venkateswarlu

#### Documents marked for the Petitioner

Ex. W1 : Xerox copy of the statement showing the Attendance particulars.

Ex. W : Xerox copy of the confidential letter dt. 24-4-78 to District Manager, FCI, by M.W. 1.

Ex. W3 : Xerox copy of the letter dated 16-12-77 addressed to the District Manager, FCI, Guntur.

Ex. W4 : Xerox copy of the Lr. dt. 13-9-77 addressed to the District Manager, enclosing the list of names of 73 regular employees etc.

Ex. W5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent

Ex. M1 : Xerox copy of the Tender Notice dt. 6-12-73.

Ex. M2 : Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.

Ex. M3 : Xerox copy of the Bill submitted by M. Subbayya.

Ex. M4 : Xerox copies of the Bills submitted by M. Subbayya.

Ex. M5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.

Ex. M6 : Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.

Ex. M7 : Xerox copy of the proceedings dt. 16-9-81 under Section 7A of Employees Provident Fund Act.

Ex. M8 : Xerox copy of the letter dated 14-10-81 by the Sr. Regl. Manager to District Manager, FCI, Guntur.

Ex. M9 : Xerox copy of the letter dt. 5-11-81 to the Regional P.F. Commissioner.

Ex. M10 : Order dt. 31-7-78 of the Authority under Payment of Wages Act (xerox copy).

Ex. M11 : Letter dt. 2-5-86 by the Personnel Manager (xerox copy).

Ex. M12 : Xerox copy of letter dt. 6-5-87 by the Personnel Manager.

Ex. M13 : Xerox copy of Lr. dt. 24-8-92 by the Executive Director.

Ex. M14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.

Ex. M15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.

Ex. M16 : Xerox copy of letter dt. 25-10-75 to the Regl. Manager.

Ex. M17 : Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

Industrial Tribunal-I, Hyderabad

नई दिल्ली, 7 अगस्त, 1997

कां०आ० 2202.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ० सी० आई० के प्रबन्धतन्त्र क सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-8-97 को प्राप्त हुआ था।

[संख्या एल० 22012/397/95—आई० आर० (सी II)]  
एस० रविश अली, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on 5-8-97.

[No. L-22012/397/95-IR(C-II)]  
S. RAVISH ALI, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

#### PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I

Dated, 26th day of June, 1997

Industrial Dispute No. 37 of 1996

#### BETWEEN :

G. Brahman Ex. Casual Labour,  
Modern Rice Mill, FCI, Sathenapalli,  
Guntur District A.P., 522/001 .. Petitioner.

#### AND

The Sr. Regional Manager,  
Food Corporation of India, Regional,  
Office, Hyderabad-500 001. .. Respondent.

#### APPEARANCES :

Sri Ch. Laxminarayana, Advocate—for the Petitioner.  
Sri B. G. Ravinder Reddy, Advocate—for the Respondent.

#### AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/397/95-IR(C.II) dated, 11-4-96 referred the following Dispute under Section 10(1)(d) & 2A of Industrial Disputes Act, 1947 for adjudication :—

"Whether Sh. G. Brahman was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur District during the period of 6 years from 1975—81? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EP-1(4)/85 Vol. II dt. 6-5-87 and EP-1(3)091 Vol. II dated 24-8-92 is legal and justified? If not what relief the workman is entitled to?

Both parties received the notice and filed their pleadings.



so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1(4)/85 Vol. II dt. 6-5-87 and EP-1(3)/91 Vol. II dated 24-8-92 is legal and justified? If not to what relief the workman entitled to?"

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the 'Petitioner', filed a claim statement contending as follows: The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sattenpalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr. Subbayya as Mutta Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dt. 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dt. 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yogamma and Rahmat Khatam who worked alongwith the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows: The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbayya a Mutta Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Mutta Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rahmat Khatam were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sattenpalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W.1 before the Advocate-Commissioner at Guntur and filed Exs. W1 to W6. The then Unit Manager of Modern Rice Mill is examined as M.W.1 and the Clerk in the Office of the Dist. Manager, F.C.I. Guntur is examined as M.W.2. They filed Exs. M1 to M17.

5. The points for consideration are:—

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sattenpalli owned by the Food Corporation of India from 1975 to 1981?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?

(4) The claim of the petitioner is barred by Res. judicata?

8. POINT NO. 1.—The admitted facts of the case are as follows: The Food Corporation of India constructed a Rice Mill at Sattenpalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sates or in the pulping unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dt. 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M2 letter dt. 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is not relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godowns.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows: M.W.1 deposed to the method of granting contract and payment of amount to the contractors as follows:—

"The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D. D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao. So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me."

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the Dist. Manager of F.C.I. Even in the Bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The

other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W.1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Muttah workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are mutta workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W4 letter dt. 13-9-77. M.W.1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Muttah Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Muttah Maistry who in turn distributes the wages to those labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor absained from 15-8-1975, H & T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Muttah Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Muttah Maistry or Headman. The concerned Officer's certificate reads as follows :

Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M6 letter dt. 13-5-87 that Muttah Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. DEWAN MOHIDEEN SAHIB & SONS vs. UNITED BIDI WORKERS' UNION SALEM & OTHER (1964 122 LLJ 633 that when the intermediary is found to be man of impecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. POINT NO. 2 :—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. POINT NO. 3 :—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dated 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. POINT NO. 4 :—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. 10 order dt. 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. **The authority of Payment of Wages Act is competent to decide whether the petitioner is a regular employee of the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in**

(1) STATE OF ASSAM & ANOTHER Vs. RAGHVA RAJAGOPALACHARI (1972 SLR 44 Page 414).

(2) BOMBAY GAS CO. LTD. Vs. JAGANNATH PANDURANG & OTHERS [1973 (31) FLR PAGE 166 (SC)] and

(3) THE PUNJAB CO-OP. BANK LTD. Vs. R. S. BHATIA (DIED) THROUGH LRS. [1975 (31) FLR PAGE 326 (SC)].

I, therefore hold that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res Judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-1(4)/85 Vol. II dt. 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principle of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

#### Appendix of evidence

Witness examined for the petitioner  
WW1 : G. Brahman  
(Before the Advocate-Commissioner at Guntur).

Witness examined for the Respondent  
M.W.1 : K. Sudhakara Rao  
M.W.2 : K. Venkateswarlu

#### Documents marked for the Petitioner

Ex. W1 : Xerox copy of the statement showing the Attendance particulars.

Ex. W2 : Xerox copy of the confidential letter dt. 24-4-78 to Distt. Manager, FCI, by M.W.1.

Ex. W3 : Xerox copy of the letter dt. 16-12-77 addressed to the Distt. Manager, FCI, Guntur.

- Ex. W4 : Xerox copy of the Lr. dt. 13-9-77 addressed to the Distt. Manager, enclosing the list of names of 73 regular employees etc.
- Ex. W5 : Xerox copy of the letter addressed to the Sr. Regional Manager, Hyderabad.  
Documents marked for the Respondent
- Ex. M1 : Xerox copy of the Tender Notice dt. 6-12-73.
- Ex. M2 : Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.
- Ex. M3 : Xerox copy of the Bill submitted by M. Subbayya.
- Ex. M4 : Xerox copy of the Bills submitted by M. Subbayya.
- Ex. M5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.
- Ex. M6 : Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Distt. Manager, FCI, Guntur.
- Ex. M7 : Xerox copy of the proceedings dt. 16-9-81 under Sec. 7A of Employees Provident Fund Act.
- Ex. M8 : Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Distt. Manager, FCI, Guntur.
- Ex. M9 : Xerox copy of the letter dt. 5-11-81 to the Regional P. F. Commissioner.
- Ex. M10 : Order dt. 31-7-78 of the Authority under Payment of Wages Act (xerox copy).
- Ex. M11 : Letter dt. 2-5-86 by the Personnel Manager (xerox copy).
- Ex. M12 : Xerox copy of letter dt. 6-5-87 by the Personnel Manager.
- Ex. M13 : Xerox copy of Lr. dt. 24-8-92 by the Executive Director.
- Ex. M14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.
- Ex. M15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.
- Ex. M16 : Xerox copy of letter dt. 25-10-75 to the Regl. Manager.
- Ex. M17 : Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 7 अगस्त, 1997

का. भा. 2203.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबन्धतन्त्र के सम्बन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-8-97 को प्राप्त हुआ था।

[संख्या एल.-22012/400/95-आई० आर० (सी II)]

एस० रविश अली, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on the 5-8-97.

[No. L-22012/400/95-IR (CII)]  
S. RAVISH ALI, Desk Officer

## ANNEXURE

### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Present : Sri V.V. Raghavan, B.A. LL.B., Industrial Tribunal-I.

Dated : 26th day of June, 1997

### INDUSTRIAL DISPUTE NO. 47 of 1996 BETWEEN

M. Narasimha Ex. Casual Labour,  
Modern Rice Mill, FCI, Sathenapalli,  
Guntur District, A.P., 522 001 . . . . PETITIONER

### AND

The Sr. Regional Manager,  
Food Corporation of India, Regional  
Office, Hyderabad-500 001 . . . . RESPONDENT

Appearances : Sri Ch. Laxminarayana, Advocate for  
the Petitioner  
Sri B.G. Ravinder Reddy, Advocate  
for the Respondent.

### AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/400/95-IR(C.II) Dated 12-4-1996 referred the following Dispute under Section 10(1)(d) & 2A of Industrial Disputes Act, 1947 for adjudication;

“Whether Sh. M. Narasimha was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur Distt. during the period of 6 years from 1975-81? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1(4)/85 Vol. II dt. 6-5-87 and EP-1(3)/91 Vol. II dated 24-8-92 is legal and justified? If not what relief the workman is entitled to?

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the ‘Petitioner’ filed a claim statement contending as follows; The petitioner was originally engaged as labour by the Contractor by name D.V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr. Subbayya as Mutta Maistry for distributing the wages to the 25 workers including the petitioner. He used to

collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dt. 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dt. 24-8-92 calling for the particulars of casual labourers etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yogamma and Rehmat Khatam who worked along with the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows; The petitioner was never employed directly by the respondent Corporation. When Mr. D.V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the food-grains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rehmat Khatan were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sattenpalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W.1 before the Advocate-Commissioner at Guntur and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W.1 and the Clerk in the Office of the Dist. Manager, F.C.I. Guntur is examined as M.W.2. They filed Exs. M1 to M17.

5. The points for consideration are;

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sattenpalli owned by the Food Corporation of India from 1975 to 1981?
- (2) Whether the action of the management in terminating the services of the workman in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?
- (4) The claim of the petitioner is barred by Res judicata ?

6. POINT NO. 1 : The admitted facts of the case are as follows; The Food Corporation of India constructed a Rice Mill at Sattenpalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex.M1 Notice dt. 6-12-1973. Sri D.V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex.M2 letter dt. 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Muttah Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975

to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows:

M.W. 1 deposed to the method of granting contract and payment of amount to the contractors as follows :—

“The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D. D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao . . . . So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me.”

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the District Manager of F.C.I. Even in the Bills Exs. M-3 and M-4 (xerox copy) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence disclosed that he was only set up as Contractor. Ex. W-1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M. W. 1 conveniently pleads the ignorance as to whether he wrote Ex. W-2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W-2 letter was signed by him. He has noted there in that the petitioner and others are Mutta workers. Ex. W-3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are mutta workers who have completed 180 days work for the

purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W-4 letter dated 13-9-1977. M.W. 1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :—

“The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasamechetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Mutta Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H & T Work is now directly handled in the above manner.”

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was received the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M-3 or Ex. M-4 bills. We can see from the Certificate of concerned Officer appended to Exs. M-3 and M-4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's certificate reads as follows :—

“Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct.”

8. Though the respondent mentioned in Ex. M-6 letter dated 13-5-1981 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mohideen Sahib and Sons Vs. United Bidi Workers' Union Salem and Another [1964(2)] LLJ. 633 that when the intermediary is found to be man of inpecupious means he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. POINT NO. 2 :—Though the respondent-Corporation did not actually terminate the service of the petitioner, there is technical termination for the

reason that from 1-11-1981 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. POINT NO. 3 :—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dated 6-5-1987 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. POINT NO. 4 :—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M-10 order dated 31-7-1978 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :—

- (1) State of Assam and Another Vs. Raghava Rajagopalachari (1972 SLR 44 Page 414).
- (2) Bombay Gas Co. Ltd. Vs. Jagannath Pandurang and Others.
- (3) The Punjab Co-operative Bank [1975 (31) FLR Page 166 (SC)] and Ltd. Vs. R. S. Bhatia (died) through L. RS. 11975 (31) FLR Page 326 (SC)].

I, therefore held that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-1992 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-(i)(4)/85 Vol II,

dated 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I.

#### Appendix of evidence

Witness examined for the petitioner.

W.W. 1: M. Narasimha (before the Advocate-Commissioner at Guntur).

Witness examined for the Respondent.

W. W. 1 : K. Sudhakara Rao.

M. W. 2 : K. Venkateswarlu.

#### Documents marked for the Petitioner.

Ex. W-1 : Xerox copy of the statement showing the Attendance particulars.

Ex. W-2 : Xerox copy of the confidential letter dated 24-4-1978 to District Manager, F.C.I. by M. W. 1.

Ex. W-3 : Xerox copy of the letter dated 16-12-1977 addressed to the District Manager FCI, Guntur.

Ex. W-4 : Xerox copy of the Lr. dated 13-9-77 addressed by the District Manager, enclosing the list of names of 73 regular employees etc.

Ex. W-5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent

Ex. M-1 : Xerox copy of the Tender Notice dated 6-12-1973.

Ex. M2 : Xerox copy of the order dated 5-4-1974 to D. V. Subba Rao.

Ex. M-3 : Xerox copy of the Bill submitted by M. Subbayya.

Ex. M-4 : Xerox copies of the Bills submitted by M. Subbayya.

Ex. M-5 : Xerox copy of the letter dated 4-1-1980 issued by the Provident Fund Commissioner.

Ex. M-6 : Xerox copy of the letter dated 13-5-1981 addressed by the Dy. Manager to district Manager, FCI, Guntur.

- Ex. M-7 : Xerox copy of the proceedings dated 16-9-1981 under Section 7-A of Employees Provident Fund Act.
- Ex. M-8 : Xerox copy of the letter dated 14-10-1981 by the Sr. Regional Manager to District Manager, FCI, Guntur.
- Ex. M-9 : Xerox copy of the letter dated 5-11-1981 to the Regional P. F. Commissioner.
- Ex. M-10 : Order dated 31-7-1978 of the Authority under Payment of Wages Act (xerox copy).
- Ex. M-11 : Letter dated 2-5-1986 by the Personnel Manager (xerox copy).
- Ex. M-12 : Xerox copy of letter dated 6-5-87 by the Personnel Manager.
- Ex. M-13 : Xerox copy of Lr. dated 24-8-1992 by the Executive Director.
- Ex. M-14 : Xerox copy of order dated 29-6-88 of Hon'ble High Court in WP No. 11963/84.
- Ex. M-15 : Xerox copy of order dated 25-4-1990 of Hon'ble High Court in WPMP No. 7738/90.
- Ex. M-16 : Xerox copy of letter dated 25-10-1975 to the Regional Manager.
- Ex. M-17 : Xerox copy of letter dated 28-7-1975 to all the SRMs by the Jt. Manager, FCI, New Delhi.

Sd./-

Industrial Tribunal-I Hyderabad.

नई दिल्ली, 7 अगस्त, 1997

कां०आ०2204.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ० सी० आई० के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-8-97 को प्राप्त हुआ था।

[संख्या एल० 22012/401/95 आई० आर० (सी II)]

एस० रविश अली, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2204 ;—In pursuance of section II of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the mana-

gement of FCI and their workmen which was received by the Central Government on the 5-8-97

[No. L-22012/401/95-IR C(II)]

S. RAVISH ALI, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT : Sri V.V. Raghwan B.A., L.L.B.

Industrial Tribunal-I.

Dated : 26th day of June, 1997

INDUSTRIAL DISPUTE NO. 36 OF 1996

BETWEEN

V. Laxminarayana Reddy Ex. Casual Labour,  
Modern Rice Mill, FCI Sathenapalli,  
Guntur District, A.P. 522 001

.....PETITIONER

AND

The Sr. Regional Manager,  
Food Corporation of India Regional  
Office, Hyderabad.—500 001.

.....RESPONDENT

APPEARANCES : Sri Ch. Laxminarayan, Advocate for the Petitioner

Sri B.G. Ravinder Reddy, Advocate for the Respondent.

AWARD

The Government of India, Ministry of Labour New Delhi by its Order No. L—22012(401/95-IR (C.II) Dated : 11-4-96 referred the following Disput under Section 10 (1) d) & 2A of Industrial Disputes Act, 1947 for Adjudication :

“Whether Sri V. Laxminarayana Reddy was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur Distt. during the period of 6 years from 1975-81 ? If so Whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-(14)/85 Vol.-II dt. 6-5-87 and EP-1 (3) /91 Vol. II dated 24-8-92 is legal and justified ? If not what relief the workman is entitled to?

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the ‘Petitioner’ filed a claim statement contending as follows: The petitioner was originally engaged as labour by the Contractor by name D.V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Mordes Rice Mill, Sathenapalli.

The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent Corporation engaged the petitioner as labour directly (However the Corporation selected one Mr. Subbayya as Muttah Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent Corporation. The Corporation issued circular dt. 6-5-87 for regularising the services of casual employees who have put in three months of services. The Districts Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dt. 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent however, regularised the services of other workers, by name Dayamma, Yogamma and Rehmat Khatam who worked along with the petitioner. Hence, the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows: The petitioner was never employed directly by the respondent Corporation. When Mr. D.V. Subba Rao Contractor absconded from 15-7-1975, the work of the handling and transporting the food-grains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry, till 1981 was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rehmat Khatam were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sattenpalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W. 1 and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W. 1 and the Clerk in the Office of the Dist. Manager, F.C.I., Guntur is examined as M.W.2 They filed Exs. M1 to M 17.

5. The points for consideration are :

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sattenpalli owned by the Food Corporation of India from 1975 to 1981?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?
- (4) The claim of the petitioner is barred by Res judicata ?

6. POINT NO 1 ;—The admitted facts of the case are as follows : The Food Corporation of India constructed a Rice Mill at Sattenpalli in the first instance and then Godowns. Subsequent to the constructed of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godowns, loading them into the lorry transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dt. 6-12-1973. Sri D.V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-96 by Ex. M2 letter dt. 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Muttah Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbaya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still



there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows: M. W. 1 deposed to the method of granting contract and payment of amount to the contractors as follows :

“The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contract has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D.V. Subba Rao.....

So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me.”

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the Dist. Manager of F.C.I. Even in the Bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya, he was/not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex W1 the weekly at-

tendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W.1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Mutta workers. Ex W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are mutta workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W 4 letter dt. 13-9-77. M.W. 1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

“The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Mutta Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H & T Work is now directly handled in the above manner.”

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's certificate reads as follows :

“Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct.”

8. Though the respondent mentioned in Ex. M 6 letter dt. 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D.C. Dewan Mohideen Sahib & Sons vs. United Bidi Workers' Union Salem & Another [1964(2) LLJ 633] that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. Point No. 2 :—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. Point No. 3 :—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dt. 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. Point No. 4 :—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dt. 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forms. It is so held in :

- (1) State of Assam & another vs. Raghava Rajagopalachari (1972 SLR 44 Page 414)
- (2) Bombay Gas Co. Ltd. Vs. Jagannath Pandurang & others [1975 (31) FLR Page 166(SC)] and

- (3) The Punjab Co-Op. Bank Ltd. Vs. R.S. Bhatia (Died) Through L. RS. [1975 (31) FLR Page 326 (SC)].

I, therefore held that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principal of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-i 4)/85 Vol. II dt. 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

#### Appendix of evidence

Witness examined for the petitioner	Witness examined for the Respondent M.W.1 : K. Sudhakara Rao
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WW1 : V. Laxminarayana Reddy	M.W.2 : K. Venkates- warlu
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#### Documents marked for the Petitioner

- |   |  |
|---|--|
| Ex.W1 : Xerox copy of the statement showing the Attendance particulars.                     |  |
| Ex.W2 : Xerox copy of the confidential letter dt. 24-4-78 to Dist. Manager, FCI, by M.W.1.  |  |
| Ex.W 3 : Xerox copy of the letter dt. 16-12-77 addressed to the Dist. Manager, FCI, Guntur. |  |

Ex.W 4 : Xerox copy of the Lr. dt. 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.

Ex.W 5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

Documents marked for the Respondent

Ex.M 1 : Xerox copy of the Tender Notice dt. 6-12-73.

Ex.M 2 : Xerox copy of the order dt. 5-4-74 to D.V. Subba Rao.

Ex.M 3 : Xerox copy of the Bill submitted by M. Subbayya.

Ex.M 4 : Xerox copies of the Bills submitted by M. Subbayya.

Ex.M 5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.

Ex.M 6 : Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.

Ex.M 7 : Xerox copy of the proceedings dt. 16-9-81 under Sec. 7A of Employees Provident Fund Act.

Ex.M 8 : Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Dist. Manager, FCI, Guntur.

Ex.M 9 : Xerox copy of the letter dt. 5-11-81 to the Regional P.F. Commissioner.

Ex.M 10 : Order dt. 31-7-78 of the Authority under Payment of Wages Act (xerox copy).

Ex.M 11 : Letter dt. 2-5-86 by the Personnel Manager (xerox copy)

Ex.M 12 : Xerox copy of letter dt. 6-5-87 by the Personnel Manager.

Ex.M 13 : Xerox copy of Lr. dt. 24-8-92 by the Executive Director.

Ex.M 14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.

Ex.M 15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.

Ex.M 16 : Xerox copy of letter dt. 25-10-75 to the Regl. Manager.

Ex.M 17 : Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

Industrial Tribunal-I, Hyderabad.

नई दिल्ली, 6 अगस्त, 1997

का०आ० 2205.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार खाद्य निगम के प्रबन्धन के संवद्ध नियोजकों और उनके कर्मकारों के बीच, अनुसन्ध में निदिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[संख्या एल०-22012/402/95/आई० आर० (सी-II)]

एस० रविश अली, डेस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Awards of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on the 4-8-97.

[ No. L-22012/402/95-I.R. (C.II) ]

S. RAVISH ALI, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Present : Sri V. V. Raghavan, B.A., LL.B,  
Industrial Tribunal-I.

Dated : 26th day of June, 1997

INDUSTRIAL DISPUTE NO. 48 of 1996

#### BETWEEN

A. Sree Ramulu, Ex. Casual Labour,  
Modern Rice Mill, FCI, Sathenapalli,  
Guntur District, A.P., 522 001. . . . PETITIONER

#### AND

The Sr. Regional Manager,  
Food Corporation of India,  
Regional Office, Hyderabad-500 001.

. . . . RESPONDENT

APPEARANCE : Sri Ch. Laxminarayana, Advocate  
for the Petitioner.

Sri B. G. Ravinder Reddy, Advocate  
for the Respondent.

#### AWARD

The Government of India, Ministry of Labour,  
New Delhi by its Order No. L-22012/402/95-IR  
(C.II) dated 12-4-96 referred the following Dispute

under Section 10(1)(d) & 2A of Industrial Disputes Act, 1947 for adjudication :—

“Whether Sri A. Sree Ramulu was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur Distt. during the period of 6 years from 1975—81? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with circular No. EF-1(4)/85 Vol. II dt. 6-5-87 and EP-1(3)/91 Vol. II dated 24-8-92 is legal and justified? If not what relief the workman is entitled to?”

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the ‘Petitioner’ filed a claim statement contending as follows : The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr. Subbayya as Muttah Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lump-sum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dt. 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dt. 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yogamma and Rehmat Khatam who worked alongwith the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows : The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao Contractor absconded from 15-7-1975.

the work of the handling and transporting the food-grains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contribution as per the provisions of the Employees’ Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rehmat Khatan were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sattenpalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W. 1 and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W. 1 and the Clerk in the Office of the Dist Manager, F.C.I., Guntur is examined as M.W. 2. They filed Exs. M1 to M17.

5. The points for consideration are :

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sattenpalli owned by the Food Corporation of India from 1975 to 1981?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?
- (4) The claim of the petitioner is barred by Res judicata

6. POINT NO. 1 :—The admitted facts of the case are as follows : The Food Corporation of India constructed a Rice Mill at Sattenpalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown.

The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dt. 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M 2 letter dt. 5-4-74. He engaged the petitioner and others in all 25 in numbers and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows :

M. W. 1 deposed to the method of granting contract and payment of amount to the contractors as follows :

"The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filling tender before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D.V. Subba Rao. This procedure was not

followed before entrusting the contract work to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D.V. Subba Rao..... So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbaya after the bill submitted by him was passed by me".

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the Distt. Manager of F.C.I. Even in the Bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya he was not described as contractor. He was only described as Mutta Maistry and Hemali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and number of days he worked was also noted therein. Though M.W.1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Muttah workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are mutta workers who have completed 180 days for the purpose of coverage under the Employees Provident Fund Act. The same was repealed in Ex. W4 letter dt. 13-9-77. M.W.1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Muttah Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amount through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975. H&T Work is now directly handled in the above manners."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certi-

ficate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's certificate reads as follows :

Certified that the Bill submitted by the Hamlies Maistry has been clarified with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M6 letter dt. 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profits. He is also working alongwith other workman and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D.C. DEWAN HOMIDEEN SAHIB & SONS Vs. UNITED BIDI WORKERS' UNION SALEM & ANOTHER (1964) (2) LLJ 633 that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I held that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. POINT NO. 2 :—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. POINT NO. 3 :—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dt. 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. POINT NO. 4 :—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dt. 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are

not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in

- (1) State of Assam & Another vs. Raghava Rajagopalachari (1972 SLR 44 Page 414)
- (2) Bombay Gas Co. Ltd. Vs. Jagannath Pandurang & Others (1975 (31) FLR Page 166 (SC) and
- (3) The Punjab Co-op. Bank Ltd. vs. R. S. Bhatia (died) through L. Rs. [1975 (31) FLR Page 326 (SC)]

I, therefore held that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed in 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-i (4)/85 Vol. II dt. 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation or the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V.V. RAGHAVAN, Indl. Tribunal-I

#### Appendix of evidence

Witness examined for the petitioner      Witness examined for the Respondent

WW1 : A. Sree Ramulu      M.W.1 : K. Sudhakara Rao  
M.W.2 : K. Venkateswarlu

#### Documents marked for the Petitioner

- Ex.W1 : Xerox copy of the statement showing the Attendance particulars.
- Ex.W2 : Xerox copy of the confidential letter dt. 24-4-78 to Dist. Manager, FCI, by M.W.1.
- Ex.W3 : Xerox copy of the letter dt. 16-12-77 addressed to the Dist. Manager, FCI, Guntur.
- Ex.W4 : Xerox copy of the Lr. No. dt. 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.
- Ex.W5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent

- Ex.M1 : Xerox copy of the Tender Notice dt. 6-12-73.
- Ex.M2 : Xerox copy of the order dt. 5-4-74 to D.V. Subba Rao.
- Ex.M3 : Xerox copy of the Bill submitted by M. Subbayya.
- Ex.M4 : Xerox copies of the Bills submitted by M. Subbayya.
- Ex.M5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.
- Ex.M6 : Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.
- Ex.M7 : Xerox copy of the proceedings dt. 16-9-81 under Sec. 7A of Employees Provident Fund Act.
- Ex.M8 : Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Dist. Manager, FCI, Guntur.
- Ex.M9 : Xerox copy of the letter dt. 5-11-81 to the Regional P.F. Commissioner.
- Ex.M10 : Order dt. 31-7-78 of the Authority under Payment of Wages Act (Xerox copy)

- Ex.M11 : Letter dt. 2-5-86 by the Personnel Manager (xerox copy).
- Ex.M12 : Xerox copy of letter dt. 6-5-87 by the Personnel Manager.
- Ex.M13 : Xerox copy of Lr. dt. 24-8-92 by the Executive Director.
- Ex.M14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.
- Ex.M15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.
- Ex.M16 : Xerox copy of letter dt. 25-10-75 to the Regl. Manager.
- Ex.M17 : Xerox copy of letter dt. 28-7-75 to all the SRMS by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 7 अगस्त, 1997

कां.आ. 2206.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एक. सी. आई. के प्रवृत्त के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-8-97 को प्राप्त हुआ था।

[संख्या एल. 22012/403/95-आई. आर. (सी II)]  
एस. राविश प्रसी, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on the 5-8-1997.

[No. L-22012/403/95-IR(C-II)]  
S. RAVISH ALI, Desk Officer

#### ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A. LL.B.  
Industrial Tribunal-I.

Dated : 26th day of June, 1997

Industrial Dispute No. 38 of 1996

## BETWEEN

B. Hanumaiah,  
Ex. Casual Labour,  
Modern Rice Mill, FCI,  
Sathenapalli,  
Guntur District,  
A.P., 522001 . . . . Petitioner

## AND

The Sr. Regional Manager,  
Food Corporation of India,  
Regional Office,  
Hyderabad-500001. . . . Respondent

## APPEARANCES :

Sri Ch. Laxminarayana, Advocate for the  
Petitioner.

Sri B. G. Ravinder Reddy, Advocate for the  
Respondent.

## AWARD

The Government of India, Ministry of Labour,  
New Delhi by its Order No. L-22012/403/95-IR  
(C. II) dated 11-4-96 referred the following Dis-  
pute under Section 10(1)(d) & 2A of Industrial  
Disputes Act, 1947 for adjudication :

“Whether Shri B. Hanumaiah was the work-  
man of FCI at Modern Rice Mill, Sath-  
napalli, Guntur Distt. during the period  
of 6 years from 1975—81? If so  
whether the action of the management of  
FCI Regional Office, Hyderabad in termi-  
nating the services of the workman in  
the year 1981 and in denial to regularise  
his services in accordance with circular  
No. EF-1(4)/85 Vol. II dt. 6-5-87 and  
EP-1(3)/91 Vol. II dated 24-8-92 is legal  
and justified? If not what relief the work-  
man is entitled to?

Both parties received the notice and filed their  
pleadings.

2. The workman hereinafter called the ‘Peti-  
tioner’ filed a claim statement contending as  
follows : The petitioner was originally engaged as  
labour by the Contractor by name D. V. Subba  
Rao in 1974 who was awarded labour contract by  
the respondent for working in Modern Rice Mill,  
Sathenapalli. The contractor rendered services for  
about one year and absconded in the year 1975.  
Thereafter the officers of the Respondent-Corpora-  
tion engaged the petitioner as labour directly. How-  
ever the Corporation selected one Mr. Subbayya as  
Muttah Maistry for distributing the wages to the  
25 workers including the petitioner. He used to  
collect the wages in lumpsum from the Management  
and distribute it among the workers. Now the res-

pondent pleaded that the said Subbayya was the  
contractor and the petitioner and other workers are  
contract labour. The respondent collected the  
Provident Fund Contributions and deposited the  
same with Provident Fund Authorities. The res-  
pondent again introduced contract labour system  
in 1981 and made the petitioner and other workers  
as contract labours, which is an unfair labour  
practice. The petitioner is a workman of the  
respondent-Corporation. The Corporation issued  
circular dt. 6-5-87 for regularising the services of  
casual employees who have put in three months of  
service. The District Manager recommended the  
name of the petitioner also. The respondent-corpora-  
tion issued another circular dt. 24-8-92 calling  
for the particulars of casual labours etc. But the  
respondent-Corporation denied the regularisation to  
the petitioner on the ground that he is a contract  
labour. The respondent, however, regularised the  
services of other workers, by name Dayamma,  
Yogamma and Rehmat Khatam who worked along-  
with the petitioner. Hence the respondent is liable  
to regularise the services of the petitioner as per  
the circulars of the Respondent.

3. The respondent filed a counter contending as  
follows : The petitioner was never employed directly  
by the respondent-Corporation. When Mr. D. V.  
Subba Rao contractor absconded from 15-7-1975,  
the work of the handling and transporting the food-  
grains was entrusted to Mr. Subbayya a Muttah  
Maistry on contract basis on the same terms and  
conditions. The said Subbayya contractor though  
called as Muttah Maistry, till 1981, was receiving  
the money and paying it to the labour engaged by  
him. The Provident Fund Commissioner demanded  
the respondent to pay the contribution. The res-  
pondent paid the contributions as per the provisions  
of the Employees Provident Fund Act and deduct-  
ed the amount from the bills of the contractor. It  
will not create any relationship of master and  
servant between the respondent and the petitioner.  
Dayamma, Yogamma and Rehmat Khatam were  
engaged for sweeping etc., and their services were  
regularised. The petitioner cannot compare himself  
with them. The Modern Rice Mill at Sattenpalli is  
not in existence and it is closed long back. The  
claim of the petitioner is a stale claim. Hence the  
petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W. 1  
and filed Exs. W1 to W5. The then Unit Manager  
of Modern Rice Mill is examined as M.W. 1 and  
the Clerk in the Office of the Dist. Manager, F.C.I.,  
Guntur is examined as M.W. 2. They filed Exs.  
M1 to M17.

5. The points for consideration are :

(1) Whether the petitioner was employed in  
the Modern Rice Mill, Sattenpalli owned  
by the Food Corporation of India from  
1975 to 1981?



- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified ?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified ?
- (4) The claim of the petitioner is barred by Res judicata ?

6. POINT NO. 1 :—The admitted facts of the case are as follows : The Food Corporation of India constructed a Rice Mill at Sattenpalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs come out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dt. 6-12-1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M2 letter dt. 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-75. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of masters and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows :

M.W. 1 deposed to the method of granting contract and payment of amount to the contractors as follows :

“The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for

handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at tabulated statement and sends the same Hyderabad. The Senior Regional Manager is competent to accept the tender up-to certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullapudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao..... So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me.”

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the Dist. Manager of F.C.I. Even in the Bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W. 1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Mutta workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are mutta workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was

repeated in Ex. W4 letter dt. 13-9-77. M.W. 1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them. Motta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Muttah Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-75, H & T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's certificate reads as follows :

Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M6 letter dt. 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mohideen Sahib & Sons vs. United Bidi Workers' Union Sallem & another 1964(2) LLJ 633 that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. POINT NO. 2 :—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. POINT NO. 3 :—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dt. 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. POINT NO. 4 :—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dt. 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :

- (1) State of Assam & another vs. Raghava Rajagopalachari (1972 SLR 44 Page 414);
- (2) Bombay Gas Co. Ltd. vs. Jagannath Pandurang & others [1975(31) FLR Page 166(SC)]; and
- (3) The Punjab Co-op. Bank Ltd. vs. R. S. Bhatia (died) through L.R.S. [1975(31) FLR Page 326(SC)].

I, therefore held that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other

S.O. 2207.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between

the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on 5-8-97.

[No. L-22012/407/95-IR(C-II)]  
S. RAVISH ALI, Desk Officer

### ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT  
HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial  
Tribunal-I

Dated, 26th day of June, 1997

Industrial Dispute No. 67 of 1996

### BETWEEN

P. Pitchaiah, Ex. Casual Labour,  
Modren Rice Mill, FCI, Sathenapalli,  
Guntur District, Andhra Pradesh-522 001.

---Petitioner

### AND

The Sr. Regional Manager,  
Food Corporation of India,  
Regional Office,  
Hyderabad-500 001.

---Respondent

### APPEARANCES :

Sri Ch. Laxminarayana, Advocate---for the  
Petitioner.

Sri B. G. Ravinder Reddy, Advocate---for the  
Respondent.

### AWARD

The Government of India, Ministry of Labour,  
New Delhi by its Order No. L-22012/407/95-IR  
(C-II), dated 2-5-96 referred the following dispute  
under Section 10(1)(d) and 2A of Industrial  
Disputes Act, 1947 for adjudication :

“Whether Sri P. Pitchaiah was the workman  
of FCI at Modern Rice Mill, Sathena-  
palli, Guntur Distt. during the period of  
6 years from 1975-81 ? If so whether  
the action of the management of FCI  
Regional Office, Hyderabad in termina-  
ting the services of the workman in the  
year 1981 and in denial to regularise  
his services in accordance with Circular  
No. EF-1(4)/85, Vol. II dated 6-5-87  
and EP-1(3)/91, Vol. II, dated 24-8-92  
is legal and justified ? If not what relief  
the workman is entitled to ?”

Both parties received the notice and filed their  
pleadings.

2. The workman hereinafter called the ‘Petitioner’ filed a claim statement contending as follows : The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice Mill, Sathenapalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However, the Corporation selected one Mr. Subbayya as Muttah Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lump sum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the Respondent-Corporation. The Corporation issued Circular dated 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dated 24-8-92 calling for the particulars of casual labours etc. But the respondent-corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yogamma and Rahmat Khatam who worked alongwith the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows : The petitioner was never employed directly by the respondent-corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions, as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma,

Yogamma and Rehmat Khatan were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sattenpalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W. 1 and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W. 1 and the Clerk in the Office of the Distt. Manager, F.C.I., Guntur is examined as M.W. 2. They filed Exs. M1 to M17.

5. The points for consideration are :

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sattenpalli owned by the Food Corporation of India from 1975 to 1981 ?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified ?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified ?
- (4) The claim of the petitioner is barred by Res judicata ?

6. POINT No. 1.—The admitted facts of the case are as follows : The Food Corporation of India constructed a Rice Mill at Sattenpalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dated 6-12-1973, Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M2 letter dated 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutha Maistry by name Sri Subbayya upto 1981. The respondent pleads

that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the Mill was closed and subsequently the Rice Mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows M.W. 1 deposed to the method of granting contract and payment of amount to the contractors as follows :

“The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filling tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D. D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mullaipudi Subbaiah. No accepted his offer to do the work at the same rate given to Mr. D.V. Subba Rao. So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me.”

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the District Manager of F.C.I. Even in the Bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W. 1 conveniently pleads the ignorance as to whether he wrote to Ex. W2 letter or not, taking advance of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Muttah workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are Mutta workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W4 letter dated 13-9-77. M.W. 1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchettv Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Muttah Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through those vouchers.

Since the regular handling and transport contractor abstained from 15-8-1975, H&T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's Certificate reads as follows :

"Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M6 letter dt. 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mohideen Sahib & Sons vs. United Bidi Workers' Union Salem & another 1964(2) LLJ 633 that when the intermediary is found to be man of impecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. POINT NO. 2 :—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. POINT NO. 3 :—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dt. 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. POINT NO. 4 :—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dt. 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :

(1) State of Assam & another vs. Raghava Rajagopalachari (1972 SLR 44 Page 414);

(2) Bombay Gas Co. Ltd. vs. Jagannath Panurang & owners [1975(31) FLR Page 100(SC)] and

(3) The Punjab Co-op. Bank Ltd. vs. R. S. Bhatia (dead) through L.R.R., [1975(31) FLR Page 326 (SC)].

I, therefore hold that the claim is barred by Res judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-1(4)85 Vol. II dt. 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

#### Appendix of Evidence

Witness examined for the Petitioner	Witness examined for the Respondent
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W.W.1 : P. Pitchaiah	M.W. 1 : K. Sudhakara Rao
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M.W. 2 : K. Venkateswarlu

#### Documents marked for the Petitioner

Ex. W1 : Xerox copy of the statement showing the Attendance particulars.

Ex. W2 : Xerox copy of the confidential letter dt. 24-4-78 to Dist. Manager, FCI, by M.W. 1.

Ex. W3 : Xerox copy of the letter dt. 16-12-77 addressed to the Dist. Manager, FCI, Guntur.

Ex. W4 : Xerox copy of the Lr. dt. 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.

Ex. W5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent

Ex. M1 : Xerox copy of the Tender Notice dt. 6-12-73.

Ex. M2 : Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.

Ex. M3 : Xerox copy of the Bill submitted by M. Subbayya.

Ex. M4 : Xerox copies of the Bills submitted by M. Subbayya.

Ex. M5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.

Ex. M6 : Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.

Ex. M7 : Xerox copy of the proceedings dt. 16-9-81 under Sec. 7A of Employees Provident Fund Act.

Ex. M8 : Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Dist. Manager, FCI, Guntur.

Ex. M9 : Xerox copy of the letter dt. 5-11-81 to the Regional P. F. Commissioner.

Ex. M10 : Order dt. 31-7-78 of the Authority under Payment of Wages Act (xerox copy).

Ex. M11 : Letter dt. 2-5-86 by the Personnel Manager (xerox copy).

Ex. M12 : Xerox copy of letter dt. 6-5-87 by the Personnel Manager.

Ex. M13 : Xerox copy of Lr. dt. 24-8-92 by the Executive Director.

Ex. M14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.

Ex. M15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMPP No. 7738/90.

Ex. M16 : Xerox copy of letter dt. 25-10-75  
to the Regl. Manager.

Ex. M17 : Xerox copy of letter dt. 28-7-75  
to all the SKUs by the Jt. Manager,  
FCI, New Delhi.

नई दिल्ली, 7 अगस्त, 1997

कां.प्र. 2208.—औद्योगिक विवाद अधिनियम, 1947  
(1947 का 14) का धारा 17 के अनुसरण में, कन्दाय  
सरकार एक सं. प्र. आ. के प्रबंधन के सम्बद्ध नियोक्तों  
और उनके कामगारों के बीच, अनुबंध में निम्नलिखित औद्योगिक  
विवाद में, औद्योगिक अधिकरण, हदरबाद के पंचपद का  
प्रकाशित करता है, जो कन्दाय सरकार को 5-8-97 का  
प्राप्त हुआ था।

[संख्या एल. 22012/408/95-आई. आर. (सी. II)]  
एल. रावश अली, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2208.—In pursuance of Section 17 of the  
Industrial Disputes Act, 1947 (14 of 1947), the  
Central Government hereby publishes the Award  
of the Industrial Tribunal, Hyderabad as shown in  
the Annexure, in the industrial dispute between the  
employers in relation to the management of FCI  
and their workmen, which was received by the  
Central Government on 5-8-1997.

[No. L-22012/408/95-IR(C-II)]  
S. RAVISH ALI, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

#### PRESENT :

Sri V. V. Raghavan, B.A., LL.B.,  
Industrial Tribunal-I.

Dated : 26th day of June, 1997

Industrial Dispute No. 68 of 1996

#### BETWEEN

R. Rama Rao,  
Ex. Casual Labour,  
Modern Rice Mill,  
FCI, Sathenapalli,  
Guntur District,  
A.P., 522001.

....Petitioner

#### AND

The Sr. Regional Manager,  
Food Corporation of India,  
Regional Office,  
Hyderabad-500001.

....Respondent

#### APPEARANCES :

Sri Ch. Laxminarayana,  
Advocate for the Petitioner.

Sri B. G. Ravinder Reddy,  
Advocate for the Respondent.

#### AWARD

The Government of India, Ministry of Labour,  
New Delhi by its Order No. L-22012/408/95-IR  
(C. II) dated 2-5-96 referred the following Dispute  
under Section 10(1)(d) & 2A of Industrial Disputes  
Act, 1947 for adjudication :

"Whether Sh. K. Rama Rao was the workman  
of FCI at Modern Rice Mill, Sathenapalli,  
Guntur Distt. during the period of  
6 years from 1975—81 / II so whether  
the action of the management of FCI  
Regional Office, Hyderabad in termina-  
ting the services of the workman in the  
year 1981 and in denial to regularise his  
services in accordance with circular No.  
EF-1(4)/95 Vol. II dt. 6-5-87 and EF-1  
(3)/91 Vol. II dated 24-8-92 is legal  
and justified? If not what relief the work-  
man is entitled to?"

Both parties received the notice and filed their  
pleadings.

2. The workman hereinafter called the  
'Petitioner' filed a claim statement contending as  
follows : The petitioner was originally engaged as  
labour by the Contractor by name D.V. Subba Rao  
in 1974 who was awarded labour contract by the  
respondent for working in Modern Rice Mill,  
Sathenapalli. The contractor rendered services for  
about one year and absconded in the year 1975.  
Thereafter the officers of the Respondent-Corpora-  
tion engaged the petitioner as labour directly. How-  
ever the Corporation selected one Mr. Subbayya  
as Mutta Maistry for distributing the wages to the  
25 workers including the petitioner. He used to  
collect the wages in lumpsum from the Management  
and distribute it among the workers. Now the res-  
pondent pleaded that the said Subbayya was the  
contractor and the petitioner and other workers  
are contract labour. The respondent collected the  
Provident Fund Contributions and deposited the  
same with Provident Fund Authorities. The res-  
pondent again introduced contract labour system  
in 1981 and made the petitioner and other workers  
as contract labours, which is an unfair labour  
practice. The petitioner is a workman of the res-  
pondent-Corporation. The Corporation issued  
circular dt. 6-5-87 for regularising the services of  
casual employees who have put in three months of  
service. The District Manager recommended the  
name of the petitioner also. The respondent-corpora-  
tion issued another circular dt. 24-8-92 calling  
for the particulars of casual labours etc. But the



respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yogamma and Rehmat Khatan who worked along with the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the respondent.

3. The respondent filed a counter contending as follows : The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, The work of the handling and transporting the food-grains was entrusted to Mr. Subbayya a Mutual Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Mutual Maistry, till 1981, was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rehmat Khatan were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sattenpalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W. 1 and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W. 1 and the Clerk in the Office of the Dist. Manager, F.C.I., Guntur is examined as M.W. 2. They filed Exs. M1 to M17.

5. The points for consideration are :

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sattenpalli owned by the Food Corporation of India from 1975 to 1981 ?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified ?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified ?
- (4) The claim of the petitioner is barred by Res judicata ?

6. POINT NO. 1 :—The admitted facts of the case are as follows : The Food Corporation of India constructed a Rice Mill at Sattenpalli in the first instance and then Godown Subsequent to the construction of godowns also, the F.C.I. does not

want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the rice mill and unloading them directly. The work also includes putting the paddy in the straws or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dt. 6-12-1975. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10-4-74 to 9-4-76 by Ex. M2 tender dt. 5-4-74. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15-7-1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutual Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1-11-1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6-8-1992 the mill was closed and subsequently the rice mill was sold away but the godown are still there. Both the parties have not deposed as to whether the petitioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows :

M.W. 1 deposed to the method of granting contract and payment of amount to the contractors as follows :

“The Regional Office called for tenders by publishing an advertisement in the news papers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond

his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Muttapudi Subbarah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao.....

So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbarah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbayya after the bill submitted by him was passed by me."

Admittedly, the above procedure was not followed in any aspect so far as Subbayya is concerned. Even the contractor was not paid directly by the Dist. Manager of F.C.I. Even in the Bills Exs. M3 and M4 (xerox copies) submitted by Mr. Subbayya, he was not described as contractor. He was only described as Mutta Maistry and Hamali Maistry. The other correspondence discloses that he was only set up as Contractor. Ex. W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W. 1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Muttah workers. Ex. W3 is also a letter written by him to the District Manager on 16-12-1977. He noted that Mr. Subbayya and 16 others are muttah workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W4 letter dt. 13-9-77. M.W. 1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is as follows :

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services and handling operations in the godowns. For actual handling of bags

handled by them, Mutta Maistry Subbarah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Muttah Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15-8-75, H & T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's certificate reads as follows :

"Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct."

8. Though the respondent mentioned in Ex. M6 letter dt. 13-5-81 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbayya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lumpsum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mohideen Sahib & Sons vs. United Bidi Workers' Union Salem & another 1964(2) LLJ 633 that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent-Corporation and not contract labour.

10. POINT NO. 2 :—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1-11-81 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. POINT NO. 3 :—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dt. 6-5-87 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. POINT NO. 4 :—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 order dt. 31-7-78 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :

- (1) State of Assam & another vs. Raghava Rajagopalachari (1972 SLR 44 page 414);
- (2) Bombay Gas Ct., Ltd., Vs. Jagannath Pandurang & others [1975(32) FLR Page 166(SC)]; and
- (3) The Punjab Co-op. Bank Ltd. Vs. R. S. Bhatia (died) through L.RS. [1975(31) FLR Page 326(SC)].

I. therefore, held that the claim is barred by Res judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case, and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-1(4)/95 Vol. II dt. 6-5-87. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

#### Appendix of evidence

Witness examined for the petitioner	Witness examined for the Respondent
WW1 : B. Rama Rao	M.W. 1 : K. Sudhakara Rao
	M.W. 2 : K. Venkateswarlu

#### Documents marked for the Petitioner

- Ex. W1 : Xerox copy of the statement showing the Attendance particulars.
- Ex. W2 : Xerox copy of the confidential letter dt. 24-4-78 to Dist. Manager, FCI, by M.W. 1.
- Ex. W3 : Xerox copy of the letter dt. 16-12-77 addressed to the Dist. Manager, FCI, Guntur.
- Ex. W4 : Xerox copy of the Lr. dt. 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.
- Ex. W5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

#### Documents marked for the Respondent :

- Ex. M1 : Xerox copy of the Tender Notice dt. 6-12-73.
- Ex. M2 : Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.
- Ex. M3 : Xerox copy of the Bill submitted by M. Subbayya.
- Ex. M4 : Xerox copies of the Bills submitted by M. Subbayya.
- Ex. M5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.
- Ex. M6 : Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.

Ex. M7 : Xerox copy of the proceedings dt. 16-9-81 under Sec. 7A of Employeeess Provident Fund Act.

Ex. M8 : Xerox copy of the letter dt. 14-10-81 by the Sr. Regl. Manager to Dist. Manager, FCI, Guntur.

Ex. M9 : Xerox copy of the letter dt. 5-11-81 to the Regional P. F. Commissioner.

Ex. M10 : Order dt. 31-7-78 of the Authority under Payment of Wages Act (xerox copy).

Ex. M11 : Letter dt. 2-5-86 by the Personnel Manager (xerox copy).

Ex. M12 : Xerox copy of letter dt. 6-5-87 by the Personnel Manager.

Ex. M13 : Xerox copy of Lr. dt. 24-8-92 by the Executive Director.

Ex. M14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.

Ex. M15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.

Ex. M16 : Xerox copy of letter dt. 25-10-75 to the Regl. Manager.

Ex. M17 : Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

नई दिल्ली, 7 अगस्त, 1997

कां० 2209.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ०सी०आई० के प्रबन्धन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-8-97 को प्राप्त हुआ था।

[संख्या एल० 22012/409 95-आई० आर. (सी II)]  
एम० राविश अली, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2209.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on the 5th August, 1997.

[No. L-22012/409/95-IR(C-II)]  
RAVISH ALI, Desk Officer

## ANNEXURE

### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

#### PRESENT :

Sri V V Raghavan, B.A., LL.B.,  
Industrila Tribunal-I.

Dated : 26th day of June, 1997

Industrial Dispute No. 69 of 1996  
BETWEEN

P. Kotaiah Ex. Casual Labour,  
Modern Rice Mill, FCI, Sathenapalli,  
Guntur District, A.P., 522001 .. PETITIONER

#### AND

The Sr. Regional Manager,  
Food Corporation of India, Regional Office,  
Hyderabad-500001. .. RESPONDENT

#### APPEARANCES :

Sri Ch. Laxminarayana, Advocate for the  
Petitioner.

Sri B. G. Ravinder Reddy, Advocate for the  
Respondent.

#### AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/409/95-IR (C.II) Dated : 2-5-96 referred the following Dispute under Section 10(1)(d) & 2A of Industrial Disputes Act, 1947 for adjudication :

"Whether Sh. P. Kotaiah was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur Distt. during the period of 6 years from 1975-81? If so whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularise his services in accordance with Circular No. FF-1(4)/85, Vol. II dt. 6-5-87 and FP-1(3)/91 Vol. II dated 24-8-92 is legal and justified? If not what relief the workman is entitled to?

Both parties received the notice and filed their pleadings.

2. The workman hereinafter called the 'Petitioner' filed a claim statement contending as follows : The petitioner was originally engaged as labour by the Contractor by name D. V. Subba Rao in 1974 who was awarded labour contract by the respondent for working in Modern Rice

Mill, Sattenpalli. The contractor rendered services for about one year and absconded in the year 1975. Thereafter the officers of the Respondent-Corporation engaged the petitioner as labour directly. However the Corporation selected one Mr. Subbayya as Mutta Maistry for distributing the wages to the 25 workers including the petitioner. He used to collect the wages in lumpsum from the Management and distribute it among the workers. Now the respondent pleaded that the said Subbayya was the contractor and the petitioner and other workers are contract labour. The respondent collected the Provident Fund Contributions and deposited the same with Provident Fund Authorities. The respondent again introduced contract labour system in 1981 and made the petitioner and other workers as contract labours, which is an unfair labour practice. The petitioner is a workman of the respondent-Corporation. The Corporation issued circular dt. 6-5-87 for regularising the services of casual employees who have put in three months of service. The District Manager recommended the name of the petitioner also. The respondent-corporation issued another circular dt. 24-8-92 calling for the particulars of casual labours etc. But the respondent-Corporation denied the regularisation to the petitioner on the ground that he is a contract labour. The respondent, however, regularised the services of other workers, by name Dayamma, Yogamma and Rehmat Khatam who worked alongwith the petitioner. Hence the respondent is liable to regularise the services of the petitioner as per the circulars of the Respondent.

3. The respondent filed a counter contending as follows :

The petitioner was never employed directly by the respondent-Corporation. When Mr. D. V. Subba Rao contractor absconded from 15-7-1975, the work of the handling and transporting the foodgrains was entrusted to Mr. Subbayya a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya contractor though called as Muttah Maistry, till 1981, was receiving the money and paying it to labour engaged by him. The Provident Fund Commissioner demanded the respondent to pay the contributions. The respondent paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor. It will not create any relationship of master and servant between the respondent and the petitioner. Dayamma, Yogamma and Rehmat Khatan were engaged for sweeping etc., and their services were regularised. The petitioner cannot compare himself with them. The Modern Rice Mill at Sattenpalli is not in existence and it is closed long back. The claim of the petitioner is a stale claim. Hence the petitioner is not entitled to any relief.

2106 GI/97—20

4. The petitioner examined himself as W.W. 1 and filed Exs. W1 to W5. The then Unit Manager of Modern Rice Mill is examined as M.W. 1 and the Clerk in the Office of the District Manager, F.C.I., Guntur is examined as M.W. 2. They filed Ex. M1 to M17.

5. The points for consideration are :

- (1) Whether the petitioner was employed in the Modern Rice Mill, Sattenpalli owned by the Food Corporation of India from 1975 to 1981?
- (2) Whether the action of the management in terminating the services of the workmen in 1981 is justified?
- (3) Whether the denial of the respondent in regularising the services of the petitioner is justified?
- (4) The claim of the petitioner is barred by Res-judicata?

6. Point No. 1.—The admitted facts of the case are as follows.—The Food Corporation of India contracted a Rice Mill at Sattenpalli in the first instance and then Godowns. Subsequent to the construction of godowns also, the F.C.I. does not want to engage the labour for handling and transporting work which means taking out the paddy bags from the stacks in the godown, loading them into the lorry, transporting the same to the Rice Mill and unloading them directly. The work also includes putting the paddy in the Sialos or in the par boiling unit for the milling purpose. The rice, bran, broken rice and germs came out of the Mill. They have to be loaded into the lorry and taken back to the godown. The Corporation called for the tenders for supply of contract labour by Ex. M1 Notice dated 6th December, 1973. Sri D. V. Subba Rao was engaged as contractor by the Regional Office for a period of 2 years from 10th April, 1974 to 9th April, 1976 by Ex. M2 letter dated 5th April, 1974. He engaged the petitioner and others in all 25 in number and executed the work for 15 months. He absconded from 15th July, 1975. The disputed period is from 1975 to 1981. The petitioner and other workmen pleaded that soon after the contractor absconded, the local management made the petitioner and other workers to work directly under them but paid the wages to the Mutta Maistry by name Sri Subbayya upto 1981. The respondent pleads that they entrusted the work of contract to Mr. Subbayya, that the said Subbayya engaged the petitioner and other workers and that there is no relationship of master and servant between the petitioner and the respondent. It is again admitted from 1st November, 1981 the F.C.I. is awarding the handling and transporting work on contract basis. On 6th August, 1992 the mill was closed and subsequently the rice mill was sold away but the godowns are still there. Both the parties have not deposed as to whether the peti-

tioner and other workers are continued to work in the godown.

7. The main dispute is the capacity in which the petitioner and other workmen worked from 1975 to 1981. The circumstances disclose that they worked directly as employees of F.C.I. and the F.C.I. has only set up Mr. Subbayya as a contractor. The reasons are as follows: M.W. 1 deposed to the method of granting contract and payment of amount to the contractors as follows:

"The Regional Office called for tenders by publishing an advertisement in the newspapers, for acting as contractor for handling and transporting. The interested parties were filing tenders before the District Manager, Guntur within the stipulated date and time. The District Manager opens the tenders prepares a tabulated statement and sends the same to the Senior Regional Manager at Hyderabad. The Senior Regional Manager is competent to accept the tender upto certain monetary limit. He has to send the tender to the Zonal Manager at Madras if the amount tendered is beyond his limit. The contractor has to deposit certain amount as security and also execute an agreement. The contractor has to deposit a portion of the security amount by D.D. in advance. The balance of the security amount is recovered from the bills payable to him in instalments. The tenders will be called with an offer to give the contract for a period of 2 years.

The Regional Office followed the above procedure before awarding the contract to Mr. D. V. Subba Rao. This procedure was not followed before entrusting the contract work to Mr. Mulla-pudi Subbaiah. We accepted his offer to do the work at the same rate given to Mr. D. V. Subba Rao.....

So long as I was there as Unit Officer the District Manager was sending a cheque for the amount payable to Subbaiah in the name of Unit Officer. I was encashing the cheque and paying cash to Mr. Subbavva after the bill submitted by him was passed by me."

Admittedly, the above procedure was not followed in any aspect so far as Subbavva is concerned. Even the contractor was not paid directly by the District Manager of F.C.I. Even in the Bills, Exs. M3 and M4 (xerox copies) submitted by Mr. Subbavva, he was not described as contractor. He was only described as Mutta Maistry and Hamali Mistry. The other correspondence discloses that

he was only set up as Contractor. Ex W1 the weekly attendance register discloses that Mr. Subbayya was also working in the Mill and the number of days he worked was also noted therein. Though M.W. 1 conveniently pleads the ignorance as to whether he wrote Ex. W2 letter or not, taking advantage of the fact that it is a xerox copy, it can be easily seen that Ex. W2 letter was signed by him. He has noted therein that the petitioner and others are Mutta workers. Ex. W3 is also a letter written by him to the District Manager on 16th December, 1977. He noted that Mr. Subbayya and 16 others are mutta workers who have completed 180 days work for the purpose of coverage under the Employees Provident Fund Act. The same was repeated in Ex. W4 letter dated 13th September, 1977. M.W. 1 himself admitted that the petitioner, other workers and Mr. Subbayya are handling the work and without any intermediary. It is also follows:

"The third list containing names 1 to 30 commencing from Mullamudi Subbaiah to Kasemchetty Gandhi are the labourers who are called and employed for such services are handling operations in the godowns. For actual handling of bags handled by them, Mutta Maistry Subbaiah will make note of the handling operations performed by these labourers and present bills. The F.C.I. will pay the amount to Mutta Maistry who in turn distributes the wages to these labourers and furnished us the acquittance for adjustment of amounts through these vouchers.

Since the regular handling and transport contractor abstained from 15th August, 1975, H & T Work is now directly handled in the above manner."

Similarly in the document filed by the respondent it may be seen that Mr. Subbayya is described as a Mutta Maistry only who was receiving the money from the Management and distributing the same to the workers. He is not described as Contractor in Ex. M3 or Ex. M4 bills. We can see from the Certificate of concerned Officer appended to Exs. M3 and M4 bill that Subbayya is only Mutta Maistry or Headman. The concerned Officer's certificate reads as follows:

Certified that the Bill submitted by the Hamalies Maistry has been clarified with the relevant records and found correct.

8. Though the respondent mentioned in Ex. M6 letter dated 13th May, 1981 that Mutta Maistry is receiving some profits and he is liable to pay the Provident Fund contributions, it is not correct. There is absolutely no evidence that he is receiving any profit. He is also working alongwith other workmen and receiving the wages.

9. Mr. Subbaya is man of no means. There is no evidence that he is getting any profit out of this work. He is only designated to receive the money on behalf of other workers, in lump sum and distribute the same to the workers. The Supreme Court held in the case of D. C. Dewan Mohideen Sahib & Sons vs. United Bidi Workers' Union Salem & Another [1964(2)] LLJ 633 that when the intermediary is found to be man of inpecunious means, he is only set up by the management to deny the rights of the workmen and the workmen cannot be contractor labour. In the above circumstances, I hold that the petitioner is a direct employee of the respondent—Corporation and not contract labour.

10. Point No. 2.—Though the respondent-Corporation did not actually terminate the services of the petitioner, there is technical termination for the reason that from 1st November, 1981 the petitioner who was a direct employee of the Respondent-Corporation was converted into a contract labour. It has to be held that the action of the respondent is not justified.

11. Point No. 3.—The daily wage labour who have put in 3 months service are entitled to regularisation as per Circular dated 6th May, 1987 referred to in the claims statement. It is not denied by the respondent. So the petitioner is entitled for regularisation.

12. Point No. 4.—The petitioner and others approached the authority under Payment of Wages Act claiming leave, wages etc., on the ground that they are direct employees of the respondent. The authority under the Payment of Wages Act passed Ex. M10 Order, dated 31-7-1978 dismissing the claim on the ground that the petitioner and other workers are not the persons employed by the Corporation and so they are not entitled to any of the claims. This order has become final. The respondent argued that this order operates as Res Judicata and the petitioner cannot agitate the same claim in a different forum. There is some force in the contention. The authority of payment of wages Act is competent to decide whether the petitioner is a workman employed by the respondent or not, for awarding the delayed wages. The same point cannot be agitated again and again in different forums. It is so held in :

- (1) State of Assam & Another vs. Raghava Rajagopalachari (1972 SLR 44 Page 414).
- (2) Bombay Gas Co. Ltd. vs. Jagannath Pandurang & Others [1975 (31) FLR Page 166 (SC)], and
- (3) The Punjab Co-op. Bank Ltd. vs. R. S. Bhatia (Died) Through L.Rs. [1975 (31) FLR Page 326 (SC)]

I, therefore hold that the claim is barred by Res Judicata.

13. There is some evidence of the Respondent paying Provident Fund contribution on behalf of petitioner under protest as Principal Employer. It is not relevant.

14. There is another aspect to be considered as to whether the petitioner is entitled to regularisation in the event of the principle of Res judicata not coming in their way. Unfortunately, it is not known as to whether the petitioner and other workmen are continuing to work under the respondent or not as at present, as it is not elicited in the evidence. It is admitted fact that Rice Mill was closed on 6-8-92 and sold away in 1996 or so. The F.C.I. is maintaining the godowns even now but it is not known whether the petitioner and other workers are continuing to work in the godowns. So in the event of the Court coming to the conclusion that Res judicata does not apply to this case and in the event of the petitioner continuing to work in the godown, he is entitled to regularisation with consequential benefits as per the Circular No. EP-i(4)/85 Vo. II dt. 6-5-1987. If the petitioner is not working in the godown he can be paid 2 years wages as compensation for the wrongful termination in 1981.

15. In the result an Award is passed holding that the petitioner is not entitled to any relief due to operation of principles of Res judicata.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 26th day of June, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I.  
Appendix of evidence

Witness examined for the petitioner.

WW1 : P. Kotaiah

Witness examined for the Respondent.

M. W. 1 : K. Sudhakara Rao

M. W. 2 : K. Venkateswarlu

Documents marked for the Petitioner

Ex. W1 : Xerox copy of the statement showing the Attendance particulars.

Ex. W2 : Xerox copy of the confidential letter dt. 24-4-78 to Dist. Manager, FCI, by M.W. 1.

Ex. W 3 : Xerox copy of the letter dt. 16-12-77 addressed to the Dist. Manager, FCI, Guntur.

Ex. W 4 : Xerox copy of the Lr. dt. 13-9-77 addressed to the Dist. Manager, enclosing the list of names of 73 regular employees etc.

Ex. W 5 : Xerox copy of letter addressed to the Sr. Regional Manager, Hyderabad.

## Documents marked for the Respondent

- Ex. M 1 : Xerox copy of te Tender Notice dt. 6-12-73.
- Ex. M 2 : Xerox copy of the order dt. 5-4-74 to D. V. Subba Rao.
- Ex. M 3 : Xerox copy of the Bill submitted by M. Subbayya.
- Ex. M 4 : Xerox copies of the Bills submitted by M. Subbayya.
- Ex. M 5 : Xerox copy of the letter dt. 4-1-80 issued by the Provident Fund Commissioner.
- Ex. M 6 : Xerox copy of the letter dt. 13-5-81 addressed by the Dy. Manager to Dist. Manager, FCI, Guntur.
- Ex. M 7 : Xerox copy of the proceedings dt. 16-9-81 under Sec. 7A of Employees Provident Fund Act.
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- Ex. M 9 : Xerox copy of the letter dt. 5-11-81 to the Regional P. F. Commissioner.
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- Ex. M 14 : Xerox copy of order dt. 29-6-88 of Hon'ble High Court in WP No. 11963/84.
- Ex. M 15 : Xerox copy of order dt. 25-4-90 of Hon'ble High Court in WPMP No. 7738/90.
- Ex. M 16 : Xerox copy of letter dt. 25-10-75 to Regl. Manager.
- Ex. M 17 : Xerox copy of letter dt. 28-7-75 to all the SRMs by the Jt. Manager, FCI, New Delhi.

Industrial Tribunal-I, Hyderabad.

नई दिल्ली, 7 अगस्त, 1997

का.प्र. 2210—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ सी आई के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-8-97 को प्राप्त हुआ था।

[संख्या एल-22012/465/94-आई. आर. (सी-II)]

एस. रविश अली, डेस्क अधिकारी

New Delhi, the 7th August, 1997

S.O. 2210.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on the 4th August, 1997.

[No. L-22012/465/94-IR (C-II)]

S. RAVISH ALI, Desk Officer

## ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, DEOKI PALACE ROAD, KANPUR

Industrial Dispute No. 7 of 1995

In the matter of dispute :

## BETWEEN

State Secretary,  
Bhartiya Khadya Nigam Karamchari Sangh,  
5/6 Habibullah Estate Hazaratganj,  
Lucknow.

## AND

Regional Manager,  
Bhartiya Khadya Nigam,  
5/6, Haibullah Estate,  
Hazaratganj Lucknow.

## AWARD

1. Central Government, Ministry of Labour, vide its notification No. L-22012/465/94-IR C-II dated 9th December, 1994, has referred the following dispute for adjudication to this Tribunal—

Whether the action of Senior Regional Manager, Food Corporation of India, Lucknow to impose penalty vide its AD III(D) order dated 14th July, 1993 on Sri Nathu Lal is legal & justified? If not, to what relief is the workman entitled?

2. Nathu Lal, concerned workman was posted as AG III(D) at Bangarmauin District Unnao in 1983. At that time Tikaraman was A.G.I. On 2nd May, 1983, inter alia, 260 bags of wheat was taken out from Ware House Godown for the purposes of being sent to Unnao. It is alleged that these bags were actually never sent to Unnao and were misappropriated by Tikaram in connivance with the concerned workman. The matter was probed by Sri V. K. Mathur, the Dy. Manager and he held that a prima-facie case was made out against both the persons. Hence a chargesheet dated 5th May, 1986 was issued to the concerned workman.



One B. P. Goel Deputy General Manager was appointed enquiry officer. The record which is available on file reveals that before enquiry officer S. N. Tripathi, Manager, Ware Housing Corporation and V. K. Mathur, Manager were examined. Thereafter the enquiry officer submitted his report on 24th December, 1987. On the basis of this report the concerned workman was dismissed from service vide order dated 14th June, 1989. The concerned workman preferred appeal which was rejected on 24th January, 1989. Thereafter, writ petition No. 2389 (SS) of 1989 was filed before the Hon'ble High Court. This writ petition was allowed on 23rd September, 1991, as dismissal order was found to be defective as copy of enquiry report was not supplied to the concerned workman before passing of dismissal order. Any how option was left with the management to pass fresh orders. Thereafter, a show cause notice was given and a punishment order on 14th July, 1993 was passed by which punishment of reduction to the lowest stage of time scale of pay of AG III (Depot) for a period of five years from 14th June, 1988 to 13th June, 1993. Feeling aggrieved by it the concerned workman has raised the instant industrial dispute.

3. In the claim statement it was alleged that the enquiry was not fairly and properly held. Further there was no collusion between him and Tikaram as such he has been wrongly punished. On the other hand in the written statement the management has alleged that enquiry was fairly and properly held and there was definite collusion between the concerned workman and Tikaram as a result of which there was a loss of 260 bags of wheat.

4. In the rejoinder nothing new was said.

5. On the pleadings of the parties a preliminary issue regarding fairness and propriety of domestic enquiry was framed. This tribunal vide finding dated 2nd May, 1996 held that preliminary enquiry was not fairly and properly held and the management was given opportunity to prove the misconduct on merit. Thereafter the management examined V. K. Mathur, an officer of the Corporation who had actually investigated the matter and the management had further filed Ext. M-1 to M-9. The concerned workman has given his evidence in rebuttal as W.W. 1.

6. Although in the charge sheet the details of collusion have not been given but the same is ascertainable from the papers relating to Tikaram which is also on record. The charge sheet and evidence in the enquiry proceeding go to reveal that the concerned workman had prepared chikmemo and gate pass in which details of vehicle in which wheat were transported were also given. From this it has been sought to be inferred that there was collusion between the concerned workman and

Tikaram. Thus it is to be seen if the concerned workman had filled chikmemo and gate pass. No doubt the copies of this chikmemos have been filed but they have not been proved. V. K. Mathur M.W. 1 has simply stated that he had investigated the matter and had *prima facie* found the case against the concerned workman made out in respect of which he had submitted his report. On the other hand the concerned workman Nathu Lal W.W. 1 had stated that he had no hand. In my opinion, it is virtually a case of no evidence. V. K. Mathur, M.W. 1 is not a witness of fact. He had simply investigated the matter. It is not clear if he is acquainted with the hand writing and signatures of the concerned workman. Hence the relevant person ought to have been examined who would have been acquainted with the hand writing and signatures of the concerned workman. Only he could have proved the writing and signatures of the workman on the chikmemo and gate pass which have been relied upon by the management.

7. In its absence as said earlier it is not proved at all that the concerned workman had actually prepared chikmemo and gate pass and if he had actually prepared these papers, whether the entries relating to vehicle numbers are fictitious.

8. In this way I am of the view that charge against the concerned workman is not proved at all. Accordingly it is held that there was no collusion between the concerned workman and Tikaram in misappropriation of 260 bags as such he has been wrongly punished.

9. Accordingly my award is that punishment of concerned by way of reduction to the lowest stage of time scale of pay of AG III(D) for a period of five years from 14th June, 1988 to 13th June, 1993 is not justified. Consequently, the concerned workman will be entitled for all difference of wages on the premises that such punishment order does not exist.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अगस्त, 1997

का.भा. 2211—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कामपुर के पंचपट को प्रकाशित करती, जो केन्द्रीय को 13-8-97 को प्राप्त हुआ था।

[संख्या एल-12012/685/89/डी IIए/आई आर (बी-2)]

मनातन, बैंक अधिकारी

New Delhi, the 14th August, 1997

S.O. 2211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on the 13th August, 1997.

[No. L-12012/685/89-D.IIA/IR (B-II)]  
SANATAN, Desk Officer

#### ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING  
OFFICER CENTRAL GOVERNMENT INDUS-  
TRIAL TRIBUNAL-CUM-LABOUR COURT,  
PANDU NAGAR, DEOKI PALACE ROAD,

#### KANPUR

Industrial Dispute No. 207 of 1996

In the matter of dispute :

#### BETWEEN

Assistant General Secretary,  
P.N.B. Staff Association,  
C-2052 Indira Nagar, Lucknow

#### AND

Regional Manager,  
Punjab National Bank,  
Regional Office, Ashok Marg,  
Lucknow.

#### AWARD

1. Central Government, Ministry of Labour, vide its notification No. L-12012/685/89-D-II-A dated 9th October, 1990, has referred the following dispute for adjudication to this Tribunal—

Whether the Regional Manager, Punjab National Bank Lucknow was justified in imposing the penalty of stoppage of one increment without cumulative effect on Sri Ashok Kumar Maurya and forfeiture of his wages for the suspension period except the subsistence allowance vide his order dated 21st November, 1988? If not, to what relief the workman was entitled to?

2. The concerned workman Ashok Kumar Maurya was working as Teller at HAL Branch of the opposite party Punjab National Bank Lucknow. He was served with a charge sheet which runs as under :—

On 11th June, 1987 around 11.15 a.m. when the office was busy in making the arrangements to remit the cash from your office to currency chest at B. O. Hazaratganj

Lucknow, Mr. N. K. Trivedi had misbehaved and threatened the undersigned. At this time, you were standing along-with Mr. N. K. Trivedi, leaving your teller's cabin.

At this juncture, Mr. Ashok Tandon officiating in place of accountant, advise Mr. Trivedi that he should not use such uncalled for language. At this you had punched on him and caught him by his shirt collar. You also physically assaulted him. The scuffle could be defused by the intervention of some staff members including officers. You had thus behaved in disorderly and riotous manner and also created nuisance in the premises of the office during the peak business hours, which is prejudicial to the interest of the bank.

One S. S. L. Jaiswal Senior manager was appointed enquiry officer. After completing enquiry he submitted his report on 26th January, 1988 whereby it was held that charge was proved against the workman hence the disciplinary authority ordered for stoppage of one increment without cumulative effect and forfeiture of wages for the suspended period by way of punishment. This punishment has been assailed by way of present reference.

In the claim statement it was denied that the concerned workman had ever assaulted Ashok Tandon who was officiating Accountant. Further it was alleged that enquiry was not held fairly and properly.

3. The opposite party bank in its written statement had maintained that enquiry was fairly and properly held and that Ashok Kumar Maurya had illegally assembled at the place after leaving his own work as alleged in charge sheet and had also assaulted Ashok Tandon.

4. In the rejoinder nothing new has said.

5. On the pleadings of the parties this tribunal framed preliminary issue regarding fairness and propriety of domestic enquiry and held that enquiry report was perverse vide finding dated 30th June, 1995 and the management was given opportunity to prove the misconduct on merits.

6. In support of its case, the management has examined B. B. Srivastava, M.W. 1, Ashok Tandon, M.W. 2, and M. A. Ansari M.W. 3. In rebuttal there is evidence of concerned workman Ashok Kumar Maurya, W.W. 1. The gist of charge sheet against the concerned workman is that during office hours he had left the seat of teller and had assembled at the place where row was taking place between others. Other part of the charge is that he alongwith other had assaulted Ashok Kumar Tandon the then officiating accountant. As regard

the action of the assault enquiry officer himself has held that actually no assault was made by the concerned workman. In view of this categorical finding of enquiry officer I think it has become final and cannot be the subject matter of decision in the current reference.

7. Now it remain to be seen if the concerned workman had joined the row after leaving his seat of teller during office hours. There is no dispute that this incident had taken place about 11.15 a.m. which is certainly office hours. All the three witnesses of the bank have stated that the concerned workman had left his letter's seat and was present where row was continued. Indeed Ashok Kumar Maurya has not denied the fact that he was posted as Teller and was present at the time of row in the bank premises. Instead from his cross examination it also emerges out that he did go there and at that time 8 to 10 customers were present but Ashok Tandon was not assaulted by any one. Thus it will be seen that main emphasis in the evidence is that he did not assault Ashok Kumar Tandon. He had not denied the fact that he had left the seat of Teller during office hours. Hence my finding is that the concerned workman had unauthorisedly left his seat during office hours without any just reasonable cause. A public servant is not supposed to leave his seat during office hours without any satisfactory reason. Hence, this part of the charge is proved and which certainly amounts to misconduct. As such a part of the charge is proved and for which the punishment awarded to the concerned workman is just and proper as well.

8. Hence my award is that the award of punishment by way of stoppage of one increment without cumulative effect on the concerned workman Ashok Kumar Maurya and forfeiture of his wages for the suspension period except the subsistence allowance vide his order dated 21st November, 1988 is justified. Consequently the concerned workman is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अगस्त, 1997

का.आ. 2212—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, संबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-97 को प्राप्त हुआ था।

[संख्या एन-12012/250/95-आई आर (बी-II)]

मनातन, डेस्क अधिकारी

New Delhi, the 14th August, 1997

S.O. 2212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on the 13th August, 1997.

[No. L-12012/250/95-IR (B-II)]

SANATAN, Desk Officer

### ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DEOKI PALACE ROAD, PANDU NAGAR KANPUR

Industrial Dispute No. 4 of 1997

In the matter of dispute between :

Secretary,

P.N.B. Staff Association,

M.M.G. 296, Section 'D',

Aliganj Housing Scheme,

Lucknow.

AND

Regional Manager,

Punjab National Bank,

M.G. Marg,

Lucknow.

### AWARD

1. Central Government Ministry of Labour, New Delhi, vide its Notification No. L-12012/250/95-I.R. (B-2) dated 20th December, 1996 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of P.N.B. Lucknow to deduct the wages from the concerned employees for participating in Dharna on leave before PNB, Z.O., Lucknow on 17th November, 1996 and 19th December, 1994 is legal and justified? Whether communication for declining the leave in writing was necessary on the part of the management? If not, to what relief they are entitled to?

2. It is unnecessary to give the details of the case as after sufficient service the concerned union has not filed the claim statement. Hence the reference is answered against the concerned workman for want of proof and prosecution. The concerned workman will not be entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अगस्त, 1997

का. मा. 2213—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनिन बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-97 को प्राप्त हुआ था।

[संख्या एम-12012/122/94-आई आर. (बी-II)]  
मनातन, डेस्क अधिकारी

New Delhi, the 14th August, 1997

S.O. 2213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Union Bank of India and their workman, which was received by the Central Government on the 13th August, 1997.

[No. L-12012/122/94-IR (B-II)]  
SANATAN, Desk Officer

#### ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING  
OFFICER CENTRAL GOVERNMENT INDUS-  
TRIAL TRIBUNAL-CUM-LABOUR COURT,  
PANDU NAGAR, DEOKI PALACE ROAD,  
KANPUR

Industrial Dispute No. 88 of 1994

In the matter of dispute :

BETWEEN

General Secretary,  
Union Bank of India Employees Union,  
620/M-33, Murari Nagar, Faizabad Road,  
Lucknow.

AND

Dy. General Manager,  
Union Bank of India,  
80, Kapoorthala Aliganj,  
Lucknow.

#### AWARD

1. Central Government, Ministry of Labour, vide its notification No. L-12012/122/94-IR-B-2 dated 13th October 1994 has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of Union Bank of India, Lucknow in fixing the basic wage of Sri IBL Mittal clerk at Rs. 1150 (including increment for

graduation) in the pay scale of Rs. 900—2835 is justified? If not, what relief is the said workman is entitled?

2. There is no dispute that the concerned workman IBL Mittal was an ex-serviceman and was appointed in that capacity as clerk on 4th January, 1988 by the opposite party Union Bank of India. At that time his basic pay was determined at Rs. 615 after protecting his last drawn pay in the Army. The total emolument includes two increments as well. In this way his pay was fixed at Rs. 685 which is the 6th stage in IV Bipartite Settlement. The case of the concerned workman is that the enforcement of 5th Bipartite Settlement his pay ought to have been fixed at Rs. 1225, keeping in view the principles that his pay is to be fixed at stage to stage basis. He was entitled for Rs. 1225 per month when 5th Bipartite Settlement came into force.

3. The grievance of the concerned workman is that opposite party instead of doing so has reduced his pay to Rs. 1150 per month by order dated 10th September, 1989 which is bad in law.

4. The opposite part has filed reply in which it has been pleaded that on 4th January, 1988 when the appointment of concerned workman was made provisions of IVth Bipartite Settlement were not enforced having expired on 30th June, 1987. Instead provision of 5th Bipartite Settlement were enforced which were signed lateron. Hence, pay was wrongly fixed in terms of IV Bipartite Settlement. When this defect came to light the same was rectified and the pay of the concerned workman was fixed on the basis of provisions of Vth Bipartite settlement.

5. In the rejoinder it has been denied that earlier pay was wrongly fixed under IV Bipartite Settlement.

6. I have heard both sides and have gone through the record. There is no dispute that when the concerned workman was appointed on 4th January, 1988 term of IV Bipartite Settlement had expired. Hence, obviously his pay was wrongly fixed under the provisions of this settlement. Hence the opposite party bank was justified in correcting its stand when this flaw came to the notice of the management. In this way I am of the view that pay of the concerned workman has been rightly correctly fixed. In this regard I would also like to refer to the case of D. S. Gandhi versus Superintendent, Gujrat State, 1997, Lab. IC 1382. In this case the pay of a compounder was wrongly fixed which was lateron corrected without affording opportunity to the workman. It was held that the management was perfectly within its right to correct the pay even if it amounts to reduction in pay and there was no need for opportunity for being heard. In view of

this authority the action of the management cannot be assailed on the ground that no opportunity was given to the concerned workman. I further hold that the pay of the concerned workman has been correctly fixed.

7. Hence my award is that the pay of the concerned workman at Rs. 1150 has been correctly fixed and he is not entitled for any relief. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अगस्त, 1997

का. प्रा. 2214. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपद को प्रकाशित करता है, जो केन्द्रीय सरकार को 13-8-97 को प्राप्त हुआ था।

[संख्या एल-12012/97/92-आई आर (बी-II)]  
सनातन, डेस्क अधिकारी

New Delhi, the 14th August, 1997

S.O. 2214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 13-8-97.

[No. L-12012/97/92-IR(B-II)]  
SANATAN, Desk Officer

#### ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial dispute No. 112 of 1992

In the matter of dispute :

#### BETWEEN

Jagdharam Kumhar,  
C/o. Sri V. N. Sekhari,  
26/104, Birhana Road, Kanpur.

2106 01/97-21

AND

Regional Manager,  
Allahabad Bank,  
Taksal Theatre Building,  
Varanasi.

#### AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its Notification No. L-12012/97/92-IR-B-2, dated 8-9-92, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Allahabad Bank, Azamgarh, U.P. in terminating the services of Shri Jagdhari Ram Kumar, peon-cum-farrash w.e.f. 1-9-85 is legal and justified ? If not, what relief the workman concerned is entitled to ?

2. The case of the concerned workman Jagdhari Ram is that he was engaged as peon-cum-farrash on 1-1-85 at Daulatabad Branch Azamgarh of the opposite party Allahabad Bank. He continuously worked upto 31-8-85. Thereafter, his services were brought to an end illegally in breach of Section 25-F of I.D. Act. Besides there has been breach of Section 25-G & H of I.D. Act.

3. The opposite party has filed reply in which it has been denied that the concerned workman was engaged as peon-cum-farrash. Instead he was engaged as Part Time Safai Wala. Hence he is not full fledged workman. Question of breach of Section 25-F G and H of the Act does not arise.

4. In the rejoinder nothing new has been alleged.

5. In support of his case the concerned workman has filed Ext. W-1 to W-4 which relate to papers of ALC(C). Besides Jagdhari Ram has examined himself. The management has not filed any documents. Instead it has examined Pakhandi Ram Maurya Manager M.W. 1. He has stated that concerned workman was engaged as Safaiwala on part time basis. The concerned workman in his cross examination has admitted that he was being paid Rs. 100 as wages.

6. First point which needs determination is as to whether the concerned workman was engaged as peon-cum-farrash or safaiwala. It has been shown that the concerned workman was getting Rs. 100 per month. This is certainly not a pay of a peon cum-farrash. It is much more than that. Such amount is paid to part time safaiwala. Hence I accept the statement of management witness and hold that concerned workman was engaged as part time safaiwala. He was never engaged as peon-cum-farrash. When the concerned workman was never engaged as peon-cum-farrash question of termination of his services in that capacity does not arise.

7. Hence, my award is that as the services of the concerned workman were never terminated as peon-cum-farrash question of its being illegal does not arise.

Dated : 7-8-97

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अगस्त, 1997

का. प्र. 2215—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में, निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-97 को प्राप्त हुआ था।

[संख्या एल-12012/30/95-आई प्रार (बी-II)]

सनातन, डेस्क अधिकारी

New Delhi, the 14th August, 1997

S.O. 2215.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Uco Bank and their workman, which was received by the Central Government on 13-8-97.

[No. L-12012/30/95-IR(B-II)]

SANATAN, Desk Officer

#### ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, DEOKI PALACE ROAD, KANPUR

Industrial Dispute No. 70 of 1995

In the matter of dispute :

#### BETWEEN

Sri Rajan Kumar,  
S/o. Bachhi Nath,  
197/309, Lookerganj,  
Allahabad.

#### AND

Divisional Manager,  
Uco Bank B-27/192, 5, Jawahar Nagar,  
Varanasi.

#### AWARD

1. Central Government, Ministry of Labour, vide its Notification No. L-12012/30/95-I.R. B-2, dated 19-6-95 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Uco Bank Varanasi/Allahabad in terminating the services of Sri Rajan Kumar, Casual workman w.e.f. 19-1-92, is legal and justified? If not, what relief is the said workman entitled to?

2. The case of the concerned workman Rajan Kumar is that he was engaged by the opposite party Uco Bank in December, 1985 as peon and he continued to work upto 18-1-92 without any break. His services were brought to an end w.e.f. 19-1-92 without payment of retrenchment compensation and notice pay. Hence, this termination is bad in law.

3. The opposite party has filed reply in which it has been alleged that the concerned workman was a daily rated worker. He has not completed 240 days in a year. He was not engaged as Chaprasi. Instead he was engaged for supplying water. Hence question of payment of retrenchment compensation and notice pay does not arise.

4. In the rejoinder nothing new has been alleged.

5. In support of his case, the concerned workman has filed Ext. W-1 to Ext. W-5. Further he has given his evidence as W.W. 1. Opposite party has examined its Assistant Manager Y. B. Singh as M.W. 1. No document have been filed. Ext. W-2 to W-5 are letters written by the officer of the bank to higher officer informing that the concerned workman is a deagent sincere and well manner worker and he should be empanelled for permanent employment. The concerned workman too has stated that from 1985 to 18-1-89, he has continuously worked but no retrenchment compensation and notice pay was given. In his cross examination he has stated that no appointment letter was given and further that he was a daily rated worker. He was removed from the service of the bank by oral order.

6. On the other hand Y. B. Singh, Assistant Manager has stated that the concerned workman has not completed 240 days in a year. He never worked as Chaprasi. In his cross examination he has stated that he has not gone through the record of the concerned workman about the number of working days. Instead he is giving statement on the basis of memory. From the above it will be obvious that the evidence of the management is not cogent. Any person who was fully conversant with the record of the concerned workman should

have been examined to prove the exact number of working days and further the vouchers through which payment was made should have been filed. On the other hand the concerned workman could not give any other evidence except that of his oral evidence which is based on his personal knowledge. To my mind his evidence is of much better quality than that of Y. B. Singh, Assistant Manager, M.W. I. Hence accepting the evidence of concerned workman, it is held that he was engaged as Chaprasi and had worked continuously from December, 1985 to 18-1-92. In this way he had completed more than 240 days in a calendar year.

नई दिल्ली, 14 अगस्त, 1997

का.प्रा. 2216—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबंध में निोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-97 को प्राप्त हुआ था।

[संख्या एन-12012/25/90-आई आर (बी-II)]

सनातन, डेस्क अधिकारी

New Delhi, the 14th August, 1997

S.O. 2216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 13-8-97.

[No. L-12012/25/90-IR(B-II)]

SANATAN, Desk Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 167 of 1990

#### PARTIES :

Employers in relation to the management of Bank of Baroda.

AND

Their Workman

#### PRESENT :

Shri Tarkeshwar Prasad, Presiding Officer

#### APPEARANCES :

For the Employers—Shri S. K. Pauwar, Manager (P).

For the Workman—None

STATE : Bihar

INDUSTRY : Banking

Dated, the 7th August, 1997

7. The authorised representative for the management bank has referred to the case of Sushil Kumari Pendey versus Director Bal Vikas Sewa avam Paushtik Ahar and others 1993 LLR 279 (All) in which it has been held that in a case of daily rated worker compliance of Section 25-F of I.D. Act is not necessary. I think this principle will not apply to the present case. It was a case in which appointment letter was given in which it was stipulated that the workman could be removed from service without any notice and in fact by written order he was removed from service in exercise of that right by the employer. Further it was a case of civil servant. In the instant case the concerned workman is not a civil servant. Further his appointment is not by written order by which management would have exercised his right to remove the concerned workman without giving any notice. The emphasis of the Hon'ble High Court was that management was given right to remove the workman from service without any notice and it was in exercise of this right that the removal from service was effected. It is not so in the instant case. I am further of the opinion that in a case of employee not having the status of civil servant this criteria should not be applied as mode of payment should not determine the right of employee. The answer to the applicability of provision of Section 25-F of I.D. Act, would depend on the continuous working as such workman. Hence having found that above mentioned authority will not apply to the present case, it is held that provisions of Section 25-F of I.D. Act, would be applicable to the concerned workman. Admittedly no notice or retrenchment compensation was paid to the concerned workman at the time of his retrenchment hence it is held that retrenchment of concerned workman is bad in law being in breach of Section 25-F of I.D. Act.

8. Hence my award is that his termination is bad in law and he is entitled for reinstatement in service.

B. K. SRIVASTAVA, Presiding Officer

## AWARD

New Delhi, the 20th August, 1997

By Order No. L-12012/25/95-I.R. (B-2) dated 1-8-1990 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal

“Whether the action of the management of Bank of Baroda in terminating the services of Shri Pradip Kumar Singh is justified? If not, to what relief is the workman entitled?”

2. The Order of reference was received in this Tribunal on 7-8-1990. After notice to the parties, they filed their respective written statements, rejoinder and documents. Thereafter the workman stopped appearing to take further step in the case, despite several adjournments.

3. On 9-6-97 Sri S. K. Pauwar, Manager (P) appearing on behalf of the management filed a petition stating therein that the workman is not interested to contest the case further. Thereafter, registered notice was issued to the workman. But neither the workman nor his authorised representative appeared. It appears that neither the workman nor his representative is interested in prosecuting the case.

4. Under the above circumstances, I render a ‘No Dispute’ award in the reference.

TARKESHWAR PRASAD, Presiding Officer

नई दिल्ली, 20 अगस्त, 1997

का.आ. 2217:—जबकि भारत सरकार के उद्यम मैसर्स नाभिकीय ऊर्जा निगम लि., मुंबई, जो कि केन्द्रीय सरकार का प्रतिष्ठान है, ने उपदान संदाय अधिनियम, 1972 (1972 का 39) (जिसे इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 5 की उपधारा (I) के अधीन छूट के लिए आवेदन किया है,

और जबकि केन्द्रीय सरकार की राय में उक्त प्रतिष्ठान के कर्मचारियों को मिलने वाले उपदान उक्त अधिनियम के अधीन प्रदत्त लाभों में कम नहीं है,

अतः अब उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, नाभिकीय ऊर्जा निगम लि. मुंबई को इस अधिसूचना के सरकारी राजपत्र में प्रकाशन की तारीख से उक्त अधिनियम के उपबंधों के प्रचालन में छूट प्रदान करती है।

[सं. एस-42014/2/96-एसएस-II]

जे. पी. शुक्ला, अवसर सचिव

S.O. 2217.—Whereas the Nuclear Power Corporation of India Limited, Mumbai, an establishment of the Central Government, has applied for exemption under sub-section (1) of the Section 5 of the Payment of Gratuity Act, 1972 (39 of 1972), (herein after referred to as the said Act);

And whereas in the opinion of the Central Government the gratuity benefit receivable by the employees of the establishment are not less favourable than the benefits conferred under the said Act;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 5 of the said Act the Central Government hereby exempts the Nuclear Power Corporation of India Limited, from the operation of the provisions of the said Act from the date of publication of this notification in the Official Gazette.

[No. S-42014/2/96-SS. II]

J. P. SHUKLA, Under Secy.

नई दिल्ली, 20 अगस्त, 1997

का.आ. 2218:—उपदान संदाय अधिनियम, 1972 (1972 का 39) की धारा 1 की उपधारा (3) के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा ऐसे न्यायों अथवा सोसाइटियों, जो सोसाइटी पंजीकरण अधिनियम, 1860 (1860 का 21) या किसी राज्य में सोसाइटियों से संबंधित किसी कानून जो इस समय प्रभाव में हो, के अन्तर्गत पंजीकृत हैं, जिनमें इस या अधिक व्यक्ति नियोजित हैं या पिछले बारह महीने में किसी भी दिन मजदूरी के लिए नियोजित थे, को प्रतिष्ठानों की ऐसी श्रेणी के रूप में विनिर्दिष्ट करती है जिन पर कथित अधिनियम सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तिथि से लागू होगा।

[सं. सं. एस-42011/3/95-एस.एस. II]

जे. पी. शुक्ला, अवसर सचिव

New Delhi, the 20th August, 1997

S.O. 2218.—In exercise of the powers conferred by clause (c) of sub-section 3 of section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies the trusts or societies, registered under the Societies Registration Act, 1860 (21 of 1860), or under any other law with respect to societies for the time being in force in any State, in which ten or more persons are employed or were employed for wages on any day of the preceding 12 months as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette.

[F. No. S-42011/3/95-SS. II]

J. P. SHUKLA, Under Secy.



नई दिल्ली, 22 अगस्त, 1997

का.आ. 2219—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 सितम्बर, 1997 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (धारा 44 और 45 के सिवाय जो पहले प्रवृत्त ही की जा चुकी है) और अध्याय 5 और 6 (धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81

के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध कर्नाटक राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

राजस्व ग्राम व नगर पालिका सीमाओं का नाम	होबली	तालुक	जिला
मथाड़ा कुरुबाराहट्टी	कसबा	चित्रदुर्गा	चित्रदुर्गा

[सं. एस-38013/13/97/97-एस.एस. I]

जे.पी. शुक्ला, अवर सचिव

New Delhi, the 22nd August, 1997

S.O.2219:—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st September, 1997 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Karnataka namely :—

Name of the revenue village or Municipal limits	Hobli	Taluk	District
Mathada Kurubarahatti	Kasaba	Chitradurga	Chitradurga

[No. S-38013/13/97-SS.I]

J. P. SHUKLA, Under Secy

नई दिल्ली, 22 अगस्त, 1997

का.आ. 2220.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 सितम्बर, 1997 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (धारा-44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है), और अध्याय 5 और 6 (धारा 76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध गुजरात राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

“जिला सूरत के तालुका चौरासी में पंचायत और राजस्व ग्राम उन, गबेनी, तलंगपोर, पारदी कन्डे, पाली, बुदिया, जीव, डिप्ली, कनशाद, सचिन सहित जी आई डी सी औद्योगिक इस्टेट की सीमाओं के अन्तर्गत” :

New Delhi, the 22nd August, 1997

S.O. 2220.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st September, 1997 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Gujarat namely :—

“Within the Panchayat and revenue limits of villages Un, Gabheni, Talangpor, Pardl-Kande, Pali, Budia, Jiav, Dipli, Kanshad, Sachin including GIDC Industrial Estate Sachin in Taluka Choryasi, District Surat”.

[संख्या एस-38013/12/97-एस.एस.-I]

जे.पी. शुक्ला, अवर सचिव

[No. S-38013/12/97-SS. I]

J. P. SHUKLA, Under Secy.

नई दिल्ली, 22 अगस्त, 1997

का.आ. 2221.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 अक्टूबर, 1997 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (धारा-44 और 45 के सिवाय जो पहले ही प्रवृत्त चुकी जा चुकी है) और अध्याय-5 और 8 (धारा-76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध राजस्थान राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:—

“जिला सीकर में सीकर नगर पालिका सीमाओं के अन्तर्गत आने वाले क्षेत्र”।

[मं. एस-38013/11/97-एस.एस.-I]  
जे. पी. शुक्ला, अव्वर सचिव

New Delhi, the 22nd August, 1997

S.O. 2221.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st October, 1997 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Rajasthan namely:—

“The areas comprising within the Municipal limits of Sikar in District Sikar”.

[No. S-38013/11/97-SS. I]  
J. P. SHUKLA, Under Secy.

नई दिल्ली, 22 अगस्त, 1997

का.आ. 2222.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारत के राजपत्र, असाधारण, भाग-II, खंड-3 (ii) दिनांक 8 जून 1995 में प्रकाशित अम संघालय, भारत सरकार की अधिसूचना सं. का.आ. 509 (ई) दिनांक 8 जून, 1995 में निम्नलिखित संशोधन करती है :

उक्त अधिसूचना में, “इस प्रयोजनार्थ केन्द्रीय सरकार द्वारा मान्यता प्राप्त कर्मचारी संगठनों के परामर्श पर धारा 4 के खंड (छ) के अधीन केन्द्रीय सरकार द्वारा नियुक्त” शीर्षक के नीचे, क्रमांक 42 के लिए की गई प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी अर्थात्:—

श्री अशोक सिंह  
संगठन सचिव इंटक  
3/435 विश्वास खंड-III  
गोमती नगर, लखनऊ. (यू.पी.)

[(मं. यू-16012/2/95-एस.एस.-I)]

जे. पी. शुक्ला, अव्वर सचिव

New Delhi, the 22nd August, 1997

S.O. 2222.—In exercise of the powers conferred by Section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Labour No. S.O. 509(E), dated the 8th June, 1995 published in the Gazette of India, Extraordinary, Part-II, Section-3(ii) dated the 8th June, 1995;

In the said notification under the heading 'Appointed by the Central Government under clause (g) of Section 4 in consultation with organisations of employees Recognised by the Central Government for the purpose' for the entries against Serial No. 42, the following entries shall be substituted namely:—

Shri Ashok Singh,  
Organising Secretary INTUC,  
3/435, Viswas Khand III,  
Gomati Nagar,  
Lucknow (UP).

[No. U-16012/2/95-SS. II]

J. P. SHUKLA, Under Secy.

(रोजगार और प्रशिक्षण महानिदेशालय)

नई दिल्ली, 22 अगस्त, 1997

का.आ. 2223.—केन्द्रीय सरकार, शिक्षा अधिनियम, 1961 (1961 का 52) की धारा के खंड (ड) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और केन्द्रीय शिक्षा परिषद् से परामर्श करने के पश्चात् उक्त अधिनियम के

प्रयोजनों के लिए तकनीकी (व्यवसायिक) शिक्षाओं के लिए  
अभिहित व्यवसाय के रूप में निम्नलिखित विषय क्षेत्रों को  
विनिर्दिष्ट करती है, अर्थात् :—

#### कृषि

1. उद्योग-कृषि
2. भूमि संरक्षण ।

#### व्यवसाय और वाणिज्य

1. औद्योगिक प्रबन्ध
2. स्वागतकर्ता
3. मूल वित्तीय सेवाएं
4. कार्यालय प्रबन्ध ।

#### इंजीनियरी और प्रौद्योगिकी :

1. भवन और मजक निर्माण
2. भवन अनुरक्षण
3. मूलिका प्रौद्योगिकी
4. कम्प्यूटर तकनीकी
5. ग्रामीण इंजीनियरी प्रौद्योगिकी
6. सामग्री प्रबन्ध प्रौद्योगिकी
7. रबड़ प्रौद्योगिकी
8. संरचना और संवित्तवनों प्रौद्योगिकी
9. चीनी प्रौद्योगिकी
10. चर्म संस्करण

#### गृह विज्ञान

1. परिवार के लिए वस्त्र
2. स्वास्थ्य देखभाल और रमणीय संस्कृति
3. विरंजन, रंगाई और वस्त्र चिकित्सा
4. बुनाई प्रौद्योगिकी ।

#### स्वास्थ्य और पराचिकित्सीय :

1. जैव चिकित्सा उपस्कर और तकनिशियन
2. दंत स्वास्थ्य-विज्ञानी
3. दंत (तकनिशियन)
4. बहुत उद्देश्य स्वास्थ्य कर्मकार
5. भेषजज्ञ
6. ई० सी० जी० और दृश्य-सीटरी तकनिशियन
7. पीषण और आहार-विज्ञान

#### 8. सहायक नर्स और सेविका (मिडवाइफ)

#### 9. प्राथमिक स्वास्थ्य कर्मकार

#### मानविकी और अन्य :

1. फोटो चित्रण
2. वाणिज्य कला
3. शारीरिक शिक्षा
4. भारत नातायम
5. कपास सम्पाजक ।

[स० डी जी ई टी 23/14-15/97-ए०पी०]

कृष्णा शर्मा, अवर सचिव

टिप्पण :- मूल नियम भारत के राजपत्र में सा०का०नि०  
356 ता० 1-8-92 के तहत प्रकाशित किए  
गए थे और तत्पश्चात् का० नि० 2144 ता०  
9-10-93, सा०का०नि० 497 ता० 9-10-93,  
का०नि० 1041 ता० 30-4-94, सा०का०नि०  
432 ता० 20-8-94, सा०का०नि० 239(अ)  
ता० 23-3-95, सा०का०नि० 433(अ) ता०  
10-5-95, सा०का०नि० 806(अ)  
ता० 26-12-95, सा०का०नि० 345(अ)  
ता० 31-7-96, सा०का०नि० 390 ता०  
14-9-96, सा०का०नि० 2650, ता० 14-9-96,  
सा०का०नि० 494 ता० 9-11-96, का०नि०  
3159 ता० 9-11-96, सा०का०नि० 496,  
ता० 9-11-96, सा०का०नि० 521 ता०  
16-11-96, सा०का०नि० 560(अ) ता०  
10-12-96, सा०का०नि० 561(अ) ता०  
10-12-96, का०नि० 860(अ) ता० 10-12-96  
सा०का०नि० 269 ता० 21-6-97, का०नि०  
1617 ता० 21-6-97 के द्वारा संशोधित  
किए गए थे ।

(Directorate General of Employment and Training  
New Delhi, the 22nd August, 1997)

S.O. 2223.—In exercise of powers conferred by  
clause (e) of section 2 of the Apprentices Act  
1961 (52 of 1961), and after consultation with the  
Central Apprenticeship Council, the Central Government hereby specifies the following subject fields  
as designated trades, for Technician (Vocational).

Apprentices, for the purposes of the said Act namely :—

**Agriculture :**

1. Horticulture.
2. Soil Conservation.

**Business and Commerce :**

1. Industrial Management.
2. Receptionist.
3. Basic Financial Services.
4. Office Management.

**Engineering and Technology :**

1. Building and Road Construction.
2. Building Maintenance.
3. Ceramic Technology.
4. Computer Technique.
5. Rural Engineering Technology.
6. Material Management Technology.
7. Rubber Technology.
8. Structure and Fabrication Technology.
9. Sugar Technology.
10. Tanneries.

**Home Science :**

1. Clothing for the family.
2. Health Care and Beauty Culture.
3. Bleaching, Dying and Fabric Painting.
4. Knitting Technology.

**Health and Paramedical :**

1. Bio Medical Equipment and Technician.
2. Dental Hygienist.
3. Dental Technician.
4. Multi Purpose Health Worker.
5. Pharmacist.
6. ECG and Audiometric Technician.
7. Nutrition and Dietetics.

8. Auxillary Nurse and Mid Wives.
9. Primary Health Worker.

**Humanities and Others :**

1. Photography.
2. Commercial Art.
3. Physical Education.
4. Bharatnatayam.
5. Cotton Classifier.

[No. DGET 23/14-15/97-AP]

KRISHNA SHARMA, Under Secy.

Footnote :—The Principal rules were published in the Gazette of India vide GSR 356 dated 1-8-92 and subsequently amended by :—

S.O. 2144 dated 9-10-93, GSR 497 dated 9-10-93, S.O. 1041 dated 30-4-94, GSR 432 dated 20-8-94, GSR 239(E) dated 23-3-95, GSR 433(E) dated 10-5-95, GSR 806(E) dated 26-12-95, GSR 345(E) dated 31-7-96, GSR 390 dated 14-9-96, GSR 2650 dated 14-9-96 GSR 494 dated 9-11-96, S.O. 3159 dated 9-11-96, GSR 496 dated 9-11-96, GSR 521 dated 16-11-96, GSR 560(E) dated 10-12-96, GSR 561(E) dated 10-12-96, S.O. 860(E) dated 10-12-96, GSR 269 dated 21-6-97, S.O. 1617 dated 21-6-97.

नई दिल्ली, 22 अगस्त, 1997

का०आ० 2224—केन्द्रीय सरकार, शिक्षा अधिनियम, 1961 (1961 का 52) की धारा 2 के खण्ड (ड) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और केन्द्रीय शिक्षुता परिषद् से परामर्श करने के पश्चात्, उक्त अधिनियम के प्रयोजनों के लिए, स्नातक और तकनीकी शिक्षुओं के लिए अधिहित व्यवसाय के रूप में निम्नलिखित विषय पात्रा को विनिर्दिष्ट करती है, अर्थात् :—

1. स्थापत्य सहायकता
2. विद्युत और इलेक्ट्रॉनिक्स इंजीनियरी ।
3. पर्यावरण प्रदूषण और नियंत्रण इंजीनियरी ।
4. जूतादि प्रौद्योगिकी ।
5. कम्प्यूटर युक्त डिजाइन । कम्प्यूटर युक्त विनिर्माण ।  
रोबोटिक्स अनुप्रयोग ।
6. जैव-नैस प्रौद्योगिकी ।  
रसायन इंजीनियरी । प्रौद्योगिकी ।

8. जल प्रबंध ।
9. जन संसाधन इंजीनियरी ।
10. मशीनी औजार और अनुरक्षण ।
11. औद्योगिक इलेक्ट्रॉनिक्स और यंत्रीकरण ।

[सं. डी जी ई टी 231/14/15/97-ए.पी.]

कृष्णा शर्मा, अवर सचिव

टिप्पण :—मूल नियम भारत के राजपत्र में सांकांति 356 तां 1-8-92 के तहत प्रकाशित किए गए थे और तत्पश्चात् सांकांति 2144 ता 9-10-93, सांकांति 497 तां 9-10-93 सांकांति 1041 तां 30-4-94, सांकांति 432 तां 20-8-94, सांकांति 239(अ) तां 23-3-95, सांकांति 433(अ) तां 10-5-95, सांकांति 806(अ) तां 26-12-95 सांकांति 345(अ) तां 6, 31-7-96, सांकांति 390 तां 14-9-96 सांकांति 2650 तां 14-9-96, सांकांति 494 तां 9-11-96, सांकांति 3159 तां 9-11-96, सांकांति 496 तां 9-11-96, सांकांति 521 तां 16-11-96, सांकांति 560(अ) तां 10-12-96, सांकांति 561(अ) तां 10-12-96, सांकांति 860(अ) तां 10-12-96, सांकांति 269 तां 21-6-97, सांकांति 1617 तां 21-6-97 के द्वारा संशोधित किए गए थे ।

New Delhi, the 22nd August, 1997

S.O. 2224.—In exercise of powers conferred by clause (e) of section 2 of the Apprentices Act, 1961 (52 of 1961), and after consultation with the Central Apprenticeship Council, the Central Government hereby specifies the following subject fields as designated trades, for Graduate and Technician Apprentices, for the purposes of the said Act namely :—

1. Architectural Assistantship.
2. Electrical and Electronics Engineering.
3. Environment Pollution and Control Engineering.

4. Footwear Technology.
5. Computer Aided Design|Computer Aided Manufacturing|ROBOTICS Application.
6. Bio-gas Technology.
7. Petro-Chemical Engineering|Technology.
8. Water Management.
9. Water Resource Engineering.
10. Machine Tools and Maintenance.
11. Industrial Electronics and Instrumentation.

[No. DGET-23|14-15|97-AP]

KRISHNA SHARMA, Under Secy.

Footnote :—The Principal rules were published in the Gazette of India vide GSR 356 dated 1-8-92 and subsequently amended by :—

S.O. 2144 dated 9-10-93, GSR 497 dated 9-10-93, S.O. 1041 dated 30-4-94, GSR 432 dated 20-8-94, GSR 239(E) dated 23-3-95, GSR 433(E) dated 10-5-95, GSR 806(E) dated 26-12-95, GSR 345(E) dated 31-7-96, GSR 390 dated 14-9-96, GSR 2650 dated 14-9-96, GSR 494 dated 9-11-96, S.O. 3159 dated 9-11-96, GSR 496 dated 9-11-96, GSR 521 dated 16-11-96, GSR 560(E) dated 10-12-96, GSR 561(E) dated 10-12-96, S.O. 860(E) dated 10-12-96, GSR 269 dated 21-6-97, S.O. 1617 dated 21-6-97.

नई दिल्ली, 22 अगस्त, 1997

का आ 2225—केन्द्रीय सरकार, शिक्षा अधिनियम, 1961 (1961 का 52) की धारा 2 के खंड (ड.) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और केन्द्रीय शिक्षा परिषद् से परामर्श करने के पश्चात् भारत सरकार के श्रम मंत्रालय, रोजगार और प्रशिक्षण महानिदेशालय की अधिसूचना सं. 462, तारीख 25 अगस्त, 1975 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, सिखाई इंजीनियरी से संबंधित क्रम सं 2 और बांध इंजीनियरी से संबंधित क्रम सं. 5 का लोप किया जाएगा ।

[सं. डी जी ई टी 231/14-15/97-ए.पी.]

कृष्णा शर्मा, अवर सचिव

टिप्पण :—मूल नियम भारत के राजपत्र में सा. का. नि. 356 ता. 1-8-92 के तहत प्रकाशित किए गए थे और तत्पश्चात् सा. नि. 2144 ता.

ता. 9-10-93, सा. का. नि. 497 ता. 9-10-93  
 का. नि. 1041 ता. 30-4-94, सा. का. नि.  
 432 ता. 20-8-94, सा. का. नि. 239 (प्र)  
 ता. 23-3-95, सा. का. नि. 433 (प्र) ता.  
 10-5-95, सा. का. नि. 806 (प्र)  
 ता. 26-12-95, सा. का. नि. 345 (प्र) ता.  
 31-7-96, सा. का. नि. 390 ता. 14-9-96, सा.  
 का. नि. 2650 ता. 14-9-96, सा. का. नि.  
 494 ता. 9-11-96, सा. का. नि. 3159 ता.  
 9-11-96, सा. का. नि. 496 ता. 9-11-96,  
 नि. 521 ता. 16-11-96, सा. का. नि. 560  
 (प्र) ता. 10-12-96, सा. का. नि. 561 (प्र)  
 ता. 10-12-96, सा. का. नि. 860 (प्र)  
 ता. 10-12-96, सा. का. नि. 269 ता.  
 21-6-97 सा. का. नि. 1617 ता. 21-6-97  
 के द्वारा संशोधित किए गए थे।

New Delhi, the 22nd August, 1997

S.O. 2225.—In exercise of powers conferred by clause (e) of section 2 of the Apprentices Act, 1961 (52 of 1961), and after consultation with the Central Apprenticeship Council, the Central Government hereby makes the following further amendments in the notification of the Government of

India in the Ministry of Labour, Directorate General of Employment and Training, No. 462, dated the 25th August, 1975, namely:—

In the said notification, serial No. 2 relating to Irrigation Engineering and serial No. 5 relating to Dam Engineering shall be omitted.

[No. DGET 23/14-15/97-AP]

KRISHNA SHARMA, Under Secy.

Footnote :—The Principal rules were published in the Gazette of India vide GSR 356 dated 1-8-92 and subsequently amended by:—

S.O. 2144 dated 9-10-93, GSR 497 dated 9-10-93, S.O. 1041 dated 30-4-94, GSR 432 dated 20-8-94, GSR 239(E) dated 23-3-95, GSR 433(E) dated 10-5-95, GSR 806(E) dated 26-12-95, GSR 345(E) dated 31-7-96 GSR 390 dated 14-9-96, GSR 2650 dated 14-9-96 GSR 494 dated 9-11-96, S.O. 3159 dated 9-11-96, GSR 496 dated 9-11-96, GSR 521 dated 16-11-96, GSR 560(E) dated 10-12-96, GSR 561(E) dated 10-12-96, S.O. 860(E) dated 10-12-96, GSR 269 dated 21-6-97, S.O. 1617 dated 21-6-97.